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FILED SEPARATELY

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MUTUAL INSURANCE COMPANY

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

COUNTY OF CLARK, a political
subdivision of the State of Nevada, on
behalf of Clark County Department of
Aviation,

Plaintiff,

vs.

FACTORY MUTUAL INSURANCE
COMPANY, a Rhode Island
Corporation, and DOES 1-10,

Defendant.

Case No: CV-S-02-1258-KJD-RJJ

**FACTORY MUTUAL INSURANCE
COMPANY'S NOTICE OF MOTION
AND MOTION FOR SUMMARY
JUDGMENT; SUPPORTING
MEMORANDUM OF POINTS AND
AUTHORITIES**

[Statement of Uncontroverted Facts;
Affidavit of Scott G. Johnson; and
Proposed Order filed concurrently
herewith]

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that Defendant FACTORY MUTUAL
INSURANCE COMPANY ("FM") moves this Court, pursuant to Rule 56 of the
Federal Rules of Civil Procedure, for summary judgment on all claims asserted by
the Plaintiff COUNTY OF CLARK ("CCDOA") against FM.

38

1 FM's summary judgment motion is made on the grounds that there are no
2 genuine issues of material fact and that FM is entitled to judgment in its favor as a
3 matter of law because there is no coverage under FM's policy for CCDOA's alleged
4 loss.

5 This motion is based on the files, records and proceedings herein, the
6 Supporting Memorandum of Points and Authorities, the Statement of
7 Uncontroverted Facts, the Affidavit of Scott G. Johnson and Exhibits thereto, filed
8 concurrently herewith, and on such oral and documentary evidence as may be
9 presented at the hearing of this motion.

10
11 DATED: May 26, 2004

ROBINS, KAPLAN, MILLER & CIRESI L.L.P.

12
13 By:


14 Scott G. Johnson
Attorneys for Defendant FACTORY MUTUAL
INSURANCE COMPANY

Memorandum of Points and Authorities

A. Introduction

CCDOA seeks insurance coverage for business losses that it sustained after the FAA issued orders grounding all aircraft and requiring airports to implement new security measures after the September 11, 2001 terrorist attack. Specifically, CCDOA claims that these orders *prevented* ingress to and egress from CCDOA's airports. But the FM policy provides coverage only when ingress to or egress from an insured location has been prevented and only when that prevention is the direct result of physical damage.

Here, the damage to the World Trade Center and Pentagon, located over 2,000 miles away, did not prevent ingress to and egress from CCDOA's airports. Rather, the alleged "prevention" of access was the direct result of the FAA's orders. And where access is not *prevented* by physical damage, but is instead *prohibited* by order of civil authority, coverage, if any, is provided only under the FM policy's Civil Authority provision. But the Civil Authority coverage does not apply here because the FAA orders were not the direct result of physical damage, and because there was no physical damage at or within 1,000 feet of CCDOA's airports as required for coverage to apply.

Because CCDOA cannot meet its burden of proving coverage under the FM policy, summary judgment must be granted.

B. Factual Background

1. CCDOA

CCDOA owns and operates McCarran International Airport, North Las Vegas Airport, Henderson Executive Airport, Jean Sport Aviation Center, Overton-Perkins Field, and Searchlight Airfield. (Uncontroverted Fact ("UF") 1.)

2. The FM Insurance Coverage.

FM issued a first-party property insurance policy to CCDOA effective October 1, 2000. (UF 2.) The FM policy provided coverage for both property

1 damage and time element (i.e., business interruption and extra expense) losses,
2 subject to the policy's terms, conditions, exclusions, and limitations. (UF 3.)

3 The property damage section of the policy generally provided coverage for
4 direct physical loss or damage to specified property of CCDOA caused by a non-
5 excluded risk. (UF 4.) For example, if a fire damaged the terminal at McCarran
6 International, the FM policy would provide coverage to repair the damage.

7 In contrast, the time element section of the FM policy provided coverage for
8 business income and extra expense losses that occur when CCDOA's business
9 operations are interrupted as a direct result of physical loss or damage of the type
10 insured by the policy to specified property:

11 **TIME ELEMENT - SECTION C**

12 **1. LOSS INSURED**

13 A. This Policy insures TIME ELEMENT loss,
14 as provided in the TIME ELEMENT
15 COVERAGES, directly resulting from
physical loss or damage of the type insured
by this Policy:

- 16 1) to property described elsewhere in
17 this Policy and not otherwise
18 excluded by this Policy or otherwise
limited in the TIME ELEMENT
COVERAGES below;
- 19 2) used by the Insured, or for which the
20 Insured has contracted use;
- 21 3) located at an Insured Location; and
- 22 4) during the Periods of Liability
described in this section.

23 (UF 5.)

24 As part of the "Gross Earnings" coverage, the FM policy provided coverage
25 for CCDOA's time element losses when an order of civil authority—that is the
26 direct result of physical damage of the type insured against under FM policy at or
27 within 1,000 feet of an insured location—*prohibited* access to that location:
28

1 **2. TIME ELEMENT COVERAGES**

2 **A. GROSS EARNINGS**

3 1) Measurement of Loss:

- 4 a) The recoverable GROSS
5 EARNINGS loss is the Actual
6 Loss Sustained by the Insured
7 of the following during the
8 PERIOD OF LIABILITY: . . .

7 **4. PERIOD OF LIABILITY**

- 8 A. The PERIOD OF LIABILITY applying to
9 all TIME ELEMENT COVERAGES, except
10 LEASEHOLD INTEREST and as shown
11 below, or if otherwise provided under the
12 TIME ELEMENT COVERAGE
13 EXTENSIONS, is as follows:

14 * * *

- 15 8) If an order of civil authority prohibits
16 access to the Insured Location and
17 provided such order is the direct
18 result of physical damage of the type
19 insured against under this Policy at
20 the Insured Location or within 1,000
21 feet of it, the period of time:

- 22 a) starting at the time of such
23 physical damage; but

- 24 b) not to exceed 30 consecutive days.

25 (UF 6, 7.) By way of example, the Civil Authority coverage would apply where
26 police or fire fighters issued an order prohibiting access to one of CCDOA's airports
27 as a direct result of damage at or within 1,000 feet of that airport.

28 Additionally, the FM policy included several time element coverage
extensions. The "Contingent Time Element" coverage is one such extension, and
it applies where CCDOA was unable to conduct business operations as a direct
result of physical loss or damage at a customer or supplier location:

1 **3. TIME ELEMENT COVERAGE EXTENSIONS**

2 **A. CONTINGENT TIME ELEMENT**

3 This Policy covers the Actual Loss
4 Sustained and EXTRA EXPENSES incurred

by the Insured during the PERIOD OF LIABILITY:

- 1) directly resulting from physical loss or damage of the type insured; and
- 2) to property of the type insured, at any locations of direct suppliers or customers located within the TERRITORY of this Policy.

(UF 8.) This coverage would apply, for example, if the property of the supplier of jet fuel (or any other product) to McCarran International was damaged and, as a direct result, CCDOA's business operations were interrupted.

Another time element coverage extension was the "Ingress/Egress" coverage. This coverage applies where access to an insured location is *prevented* as a direct result of physical loss or damage:

3. TIME ELEMENT COVERAGE EXTENSION

* * *

C. INGRESS/EGRESS

This Policy covers the Actual Loss Sustained and EXTRA EXPENSE incurred by the Insured due to the necessary interruption of the Insured's business due to prevention of ingress to or egress from an Insured Location, whether or not the premises or property of the Insured is damaged, provided that such prevention is a direct result of physical damage of the type insured by this Policy, to the kind of property not excluded by this Policy.

(UF 9.) The Ingress/Egress coverage would apply, for instance, where a collapsed building blocked the only roadway leading to an insured location and, as a direct result, made it physically impossible to get in or out of that location.

Finally, the FM policy included a "Protection and Preservation of Property – Time Element" coverage extension. This coverage applies where CCDOA's business operations were interrupted because it took reasonable measures to temporarily protect its property from immediately impending insured physical loss

1 or damage at such insured property:

2 **3. TIME ELEMENT COVERAGE EXTENSION**

3 * * *

4 **E. PROTECTION AND PRESERVATION**
 5 **OF PROPERTY – TIME ELEMENT**

6 The Policy covers the Actual Loss Sustained
 7 by the Insured for a period of time not to
 8 exceed 48 hours prior to and 48 hours after
 9 the Insured first taking reasonable action for
 10 the temporary protection and preservation of
 property insured by this Policy provided
 such action is necessary to prevent
 immediately impending physical loss or
 damage insured by this Policy at such
 insured property.

11 (UF 10.) If, for example, CCDOA's business operations were interrupted because
 12 it took reasonable measures to temporarily protect insured property and prevent
 13 damage from an immediately impending flood, the policy would provide coverage.

14 **3. The September 11, 2001 National Ground Stop Order.**

15 At approximately 8:00 a.m.¹ on September 11, 2001, American Flight 11 took
 16 off from Boston's Logan airport for Los Angeles. (UF 12.) Approximately fourteen
 17 minutes later, United Flight 175 also took off from Boston's Logan airport for Los
 18 Angeles. (UF 13.) At approximately 8:21 a.m., American Flight 77 took off from
 19 Washington Dulles airport for Los Angeles. (UF 14.) Around 8:43 a.m., United
 20 Flight 93 took off from Newark airport for San Francisco. (UF 15.)

21 Sometime before 8:46 a.m., American Flight 11 was hijacked. (UF 16.)
 22 Shortly thereafter, FAA National Operations Manager Ben Sliney learned of a radio
 23 transmission from that plane to the effect that "we have more planes." (UF 20.) As
 24 National Operations Manager, Sliney's mandate was to insure the safe and efficient
 25 operation of the national airspace system, and, therefore, he had authority to issue
 26 orders to insure the safe and efficient operation of that system. (UF 18, 19.)

27
 28

¹ Unless noted otherwise, all times are Eastern Daylight Time.

1 At approximately 8:46 a.m. American Flight 11 crashed into the World Trade
2 Center's north tower. (UF 21.) Approximately sixteen minutes later, at 9:02 a.m.,
3 United Flight 175 crashed into the south World Trade Center tower. (UF 22.)

4 Meanwhile, at the FAA National Operations headquarters, the FAA was
5 tracking all "suspicious" aircraft—aircraft that were not on their proper route or
6 were not communicating with the FAA—and recording them on a status board. (UF
7 23.) At one point, there were as many as 10-12 planes on the status board. (UF 24.)

8 After the second crash into the World Trade Center, FAA National Operations
9 Manager Sliney was concerned that hijacked aircraft were being used as guided
10 missiles—i.e., that pilots were purposefully directing planes into buildings. (UF
11 27.) And when it became apparent that there were guided missiles flying around,
12 the FAA first decided to stop aircraft from taking off. (UF 25.) The FAA did this
13 in a series of "ground stop" orders, first in New York, then Boston, then Los
14 Angeles, then most of the East Coast, and finally, at 9:26 a.m., a national ground
15 stop. (UF 25, 28.)

16 A "ground stop is a traffic management tool." (UF 29.) And National
17 Operations Manager Sliney issued the national ground stop order pursuant to his
18 authority to insure the safe and efficient operation of the national airspace system.
19 (UF 30.)

20 At approximately 9:40 a.m., American Flight 77 crashed into the Pentagon.
21 (UF 31.) Approximately five minutes later, FAA National Operations Manager
22 Sliney ordered all aircraft to land at the nearest airport as soon as practical. (UF
23 32.) Shortly thereafter, at approximately 10:07 a.m., United Flight 93 crashed in
24 Stony Creek Township, Pennsylvania. (UF 33.)

25 Next, and at 10:39 a.m., the FAA, reaffirming its earlier orders, issued a
26 Notice to Airmen (NOTAM) that prohibited takeoffs and landings at all airports:

27 FDC SPECIAL NOTICE. DUE TO EXTRAORDINARY
28 CIRCUMSTANCES AND FOR REASONS OF
SAFETY, ATTENTION ALL AIRCRAFT

1 OPERATORS, BY ORDER OF THE FEDERAL
2 AVIATION COMMAND CENTER ALL
3 AIRPORTS/AIRDROMES ARE NOT AUTHORIZED
4 FOR LANDING AND TAKEOFF. ALL TRAFFIC
INCLUDING AIRBORNE AIRCRAFT ARE
ENCOURAGED TO LAND SHORTLY. . . .

(UF 34.)

5 As the NOTAM “reaffirming” the earlier orders makes clear, safety was the
6 reason for the orders. In fact, in his September 20, 2001 Congressional testimony,
7 Secretary of Transportation Norman Mineta confirmed that the FAA’s orders were
8 issued to prevent additional aircraft from being used as a terrorist weapon:

9 On the morning of September 11th, on the first word of
10 the attack, I moved directly to the Presidential Emergency
11 Operations Center in the White House. As soon as I was
12 aware of the nature and scale of the attack, I called from
13 the White House to order the air traffic system to land all
14 aircraft, immediately and without exception. That was an
unprecedented step. *But with the risk of additional flights
that might be used as terrorist weapons, I believe that it
was the right and necessary step to take.*

(UF 35.)

15 Similarly, FAA Administrator Jane F. Garvey testified before Congress that
16 the air operations were shut down because of the risk of additional hijackings:

17 On the morning of September 11th, there were 4,873
18 instrument flight rule (IFR) flights operating in U.S.
19 airspace. As soon as Secretary Mineta was aware of the
20 nature and scale of the terrorist attack on New York and
21 Washington—that we were faced with, not one, but four
possible hijackings, and several other rumors of missing
or unidentified aircraft—the Secretary ordered the air
traffic system shut down for all civil operations.

(UF 36.)

22
23 **4. The FAA Issues Safety-Related Security Directives to CCDOA on**
24 **September 11, 2001.**

25 No CCDOA property was damaged on September 11, 2001. (UF 38.)

26 Similarly, there was no immediately impending physical loss or damage at any of
27 CCDOA’s airports. (UF 39.)

1 During the morning of September 11, the FAA issued several security
2 directives to CCDOA. (UF 41.) The security directives contain “security-sensitive
3 information” and cannot be disclosed. (UF 42.) But in general terms, these security
4 directives required CCDOA to go through a “sterilization and a recertification”
5 process. (UF 42.) The “sterilization” required CCDOA to “clear everybody and
6 every unidentified object out.” (UF 43.) The recertification required CCDOA to
7 fulfill all of the measures of the airport’s security plan and implement any new
8 security measures. (UF 44.)

9 **5. The National Ground Stop Was Extended While New Security Measures**
10 **Designed to Reduce the Likelihood of Additional Terrorist Attacks Were**
11 **Implemented.**

12 On September 12, 2001, Secretary of Transportation Norman Mineta
13 announced that the FAA was temporarily extending the ground stop order while
14 additional security measures were being completed. (UF 48.) Secretary Mineta said
15 that “Safety is always of paramount importance, and in these extraordinary times we
16 intend to be vigilant.” (UF 48.)

17 The FAA adopted several new security measures and then ordered all airports
18 to implement these security measures before they would be certified to reopen. (UF
19 44, 47.) These new security measures included: establishment of a 300-foot
20 perimeter for parked vehicles; suspension of curbside check-ins; more frequent
21 searches of carry-on baggage; increased presence of uniformed and plainclothes
22 security personnel; and allowing only passengers with a flight ticket and
23 identification past the security gates. (UF 46.)

24 These new security measures—like the other FAA orders—were intended to
25 reduce the likelihood of aircraft being hijacked and used in a terrorist attack. (UF
26 47.) Indeed, as FAA National Operations Manager Sliney put it, the FAA was going
27 to permit only those aircraft that it “deemed to be secure enough not to become a
28 guided missile” to “fly in the national air space system” (UF 47.)

1 Transportation Secretary Mineta ordered the national airspace reopened to
2 commercial aviation at 11:00 a.m. on September 13, 2001. (UF 49.) By then,
3 McCarran International had already been certified by the FAA to be in compliance
4 with all current security directives. (UF 55.)

5 **6. Nothing Prevented Airplanes From Taking Off or Landing Between**
6 **September 11, 2001 and September 13, 2001.**

7 The FAA *prohibited* aircraft from taking off and landing between the issuance
8 of the September 11 ground stop order and the September 13 reopening of the
9 national air space. But absolutely nothing *prevented* airplanes from taking off or
10 landing at the nation's airports during that time.

11 For example, a FAA controller cleared a Federal Express airplane for take off
12 from an airport in Great Falls, Montana after the FAA groundstop order was issued.
13 (UF 53.) Additionally, the FAA specifically allowed certain aircraft to take off and
14 land after issuance of the FAA ground stop order and before the September 13
15 reopening of the nation's airspace, including aircraft carrying medical supplies and
16 Federal Reserve checks. (UF 53.) And on September 12—during the time that
17 CCDOA claims that ingress to or egress from its airports was “*prevented*”—aircraft
18 that were diverted on September 11 were allowed to continue to their original
19 destinations. (UF 48.) There were two or three such aircraft that took off or landed
20 at CCDOA's McCarran airport on September 12. (UF 54.)

21 **7. CCDOA Submits Claim to FM.**

22 On November 7, 2001, CCDOA notified FM of a claim for “Business
23 interruption loss due to terrorist attack in New York and Washington, DC.” (UF
24 56.) CCDOA claimed that there was coverage under the FM policy's
25 Ingress/Egress, Contingent Time Element, and Protection and Preservation of
26 Property coverage extensions. (UF 57.)

27 On April 16, 2002, and after conducting a full and complete investigation, FM
28 denied CCDOA's claim for the following reasons, among others:

- 1 • There was no coverage under the Civil Authority coverage because the
- 2 FAA orders grounding all aircraft did not directly result from physical
- 3 damage at or within 1,000 feet of any CCDOA airport as required by
- 4 the policy;
- 5 • There was no coverage under the Ingress/Egress provision because
- 6 ingress to or egress from CCDOA airports was not prevented as a
- 7 direct result of physical damage of the type insured against as required
- 8 by the policy;
- 9 • There was no coverage under the FM policy's Contingent Time
- 10 Element coverage because there was no physical loss or damage at any
- 11 direct supplier or customer location as required by the policy; and
- 12 • There was no coverage under the Protection and Preservation of
- 13 Property – Time Element coverage because there was no immediately
- 14 impending physical loss or damage at any CCDOA airport as required
- 15 by the policy.

16 (UF 58.)

17 **8. CCDOA Sues FM.**

18 On August 30, 2002, CCDOA sued FM for declaratory relief, breach of
19 contract, Unfair Claims Settlement Practices, and bad faith. (UF 59.)

20 **9. A Federal District Court In Illinois Granted Summary Judgment to FM**
21 **on the City of Chicago's Identical September 11 Airport Claim.**

22 Like CCDOA here, the City of Chicago—the owner of O'Hare International
23 Airport, Meigs Field, and Chicago Midway Airport—submitted a claim to FM for
24 business interruption losses caused by the FAA's September 11, 2001 ground stop
25 order. *See City of Chicago v. Factory Mut. Ins. Co.*, 2004 U.S. Dist. LEXIS 4266,
26 No. 02 C 7023 (N.D. Ill. March 11, 2004) (notice of appeal filed). Also as here, FM
27 denied the claim. *Id.* at *3-4. On March 11, 2004, the Court granted FM summary
28 judgment, finding no coverage for the City's claim. *Id.* at *13.

1 Construing a similar Ingress/Egress coverage provision, the Court found no
2 coverage as a matter of law. Indeed, the Court found that the *direct* cause of the
3 City's loss was the FAA's ground stop order:

4 More precisely, the direct cause of the business
5 interruption suffered by the City was the FAA ground
stop order, which was an order of civil authority.

6 *Id.* at *10. Like the FM policy here, the policy issued to the City provided coverage
7 for the loss of access caused by an order of civil authority only if the order was "the
8 direct result of physical damage of the type insured against under this policy at the
9 described location or within 1,000 feet of it." *Id.* at *11. The Court found that this
10 limitation defeated coverage because the claimed damage was in New York and
11 Washington D.C. *Id.*

12 The Court further found that the FAA ground stop order was imposed to
13 prevent further terrorist attacks:

14 The ground stop order was ultimately imposed to protect
15 against any further terrorist attacks like those that
16 damaged and/or destroyed the World Trade Center and
the Pentagon.

17 *Id.* at *12. The Court concluded that the damage to the World Trade Center and the
18 Pentagon was only an *indirect* cause of the FAA ground stop order and the
19 policy—like the FM policy here—did not cover "indirect or remote loss or damage":

20 Thus, although ingress to and egress from the airport[s]
21 were prevented by the FAA's order and were indirectly
22 caused by terrorist-inflicted damage, this damage is one
of the types of damage excluded by this policy in that it
was indirect and remote damage inflicted upon the World
Trade Center and the Pentagon.

23 *Id.* at *7-8.

24 Lastly, the Court rejected the City's claim that there was coverage under the
25 FM policy's Protection and Preservation of Property coverage provision, which like
26 the one in FM's policy here, is limited to business interruption caused by temporary
27 actions "to prevent immediately impending physical loss or damage insured by this
28 policy." *Id.* at *12. The Court found "no evidence that the FAA's ground stop was

1 in any way imposed in order to protect Midway, O'Hare, or Meigs Field from
2 immediately impending physical loss or damage." *Id.*

3 C. Argument

4 1. Summary Judgment Is Appropriate Where, as Here, There Is No 5 Genuine Issue of Material Fact, and the Moving Party Is Entitled to 6 Judgment as a Matter of Law.

7 Under Rule 56(c), summary judgment is appropriate if there is no genuine
8 issue as to any material fact and the moving party is entitled to a judgment as a
9 matter of law. Fed. R. Civ. P. 56(c).

10 FM, as the moving party, has the initial burden of demonstrating that
11 summary judgment is proper. *Celotex v. Catrett*, 477 U.S. 317, 323 (1986). The
12 burden then shifts to the non-moving party to set forth specific facts demonstrating
13 a genuine issue for trial. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250 (1986).
14 Summary judgment shall be entered "against a party who fails to make a showing
15 sufficient to establish the existence of an element essential to that party's case, and
16 on which that party will bear the burden of proof at trial." *Celotex*, at 322.

17 As the insured, CCDOA bears the burden of proving at trial that its alleged
18 loss falls within the terms of the various provisions under which it seeks coverage.
19 *See, e.g., Lucini-Parish Ins., Inc. v. Buck*, 836 P.2d 627, 629 (Nev. 1992). *See*
20 *generally* 17 Lee R. Russ, *Couch on Insurance 3d* § 254.11, at 254-27 (2001) ("The
21 principle that the insured has the burden of proving that its claimed loss falls within
22 the coverage of the insurance policy is sufficiently established to be described as
23 'hornbook law.'"). But as will be seen, CCDOA cannot meet its burden and cannot
24 present evidence that there remain genuine issues for trial.

25 ///

26 ///

27 ///

28 ///

1 **2. The FM Policy's Civil Authority Coverage Does Not Apply Because**
2 **There Was No Physical Loss or Damage At or Within 1,000 Feet of Any**
3 **CCDOA Airport.**

4 Where a governmental authority *prohibits* access to the insured's premises,
5 coverage, if any, potentially exists only under the FM Policy's Civil Authority
6 coverage:

7 **2. TIME ELEMENT COVERAGES**

8 **A. GROSS EARNINGS**

9 ... Actual Loss Sustained by the Insured of the
10 following during the PERIOD OF LIABILITY: . .
11 .

11 **4. PERIOD OF LIABILITY**

12 * * *

13 If an order of civil authority prohibits access to the
14 Insured Location and provided such order is the
15 direct result of physical damage of the type insured
16 against under this Policy at the Insured Location or
17 within 1,000 feet of it, the period of time:

- 16 a) starting at the time of such physical damage; but
- 17 b) not to exceed 30 consecutive days.

18 (UF 6, 7.)

19 Here, CCDOA's Rule 30(b)(6) designee and Director of Aviation Randall
20 Walker, testified that CCDOA's claimed loss of access was the direct result of the
21 FAA's orders—orders of civil authority:

22 Q. Let's move on to subject matter 2 in Exhibit 1 [the
23 Rule 30(b)(6) deposition notice]: "The manner by which
24 CCDOA claims that ingress to or egress from its airports
25 was prevented on September 11th through the 13th,
26 2001" Can you describe the manner in which CCDOA
27 claims that ingress to or egress from its airports was
28 prevented on September 11, 2001?

26 A. First off, all airplanes were prohibited by federal
27 order from flying, so no airplanes could arrive at our
28 airport or leave from our airport under federal order.

 In addition to that, the terminal needed to be
vacated for security reasons, so the terminal was closed to
all nonbadged individuals, and the roadways into the

1 airport were blocked and – to allow the airport to be able
2 to have control of the airport in a sterile environment and
3 be able to do its security checks in accordance with the
4 FAA directives.

5 (UF 50.) Mr. Walker further testified that the prevention of ingress and egress
6 began “[a]s soon as the FAA grounded all the aircraft” and ended “[w]hen the FAA
7 authorized aircraft to begin operations into McCarran once again.” (UF 51.)

8 Thus, any lack of access was the direct result of orders of civil authority. But
9 there is no coverage here because FM’s Civil Authority provision requires that the
10 order of civil authority be the direct result of physical damage at or within 1,000 feet
11 of an insured location, which indisputably did not occur. (UF 7, 38.)

12 That is precisely what the court found in the City of Chicago’s identical 9/11
13 airport claim:

14 More precisely, the direct cause of the business
15 interruption suffered by the City was the FAA ground
16 stop order, which was an order of civil authority.

17 *City of Chicago*, 2004 U.S. Dist. LEXIS 4266, at *10. In *City of Chicago*, the court
18 granted FM summary judgment, reasoning that the policy’s Civil Authority
19 provision applied only when the governmental order prohibiting access is the direct
20 result of physical damage of the type insured at or within 1,000 feet of an insured
21 location—something which obviously did not occur. *Id.* at *10-11.

22 As in *City of Chicago*, the FM policy’s Civil Authority provision provides
23 coverage only when the governmental order prohibiting access is the direct result
24 of physical damage of the type insured at or within 1,000 feet of an insured location.
25 Thus, and just as in *City of Chicago*, the requirements of FM’s Civil Authority
26 provision have not been met.

27 **3. The FM Policy’s Ingress/Egress Coverage Does Not Apply Because**
28 **Ingress To or Egress From the CCDOA Airports Was Not Prevented As**
a Direct Result of Physical Damage of the Type Insured.

The FM Policy’s Ingress/Egress coverage extension applies only where
ingress to or egress from an insured location was *prevented* “as a direct result” of

1 certain physical damage:

2 **C. INGRESS/EGRESS**

3 This Policy covers the Actual Loss Sustained and
4 EXTRA EXPENSE incurred by the Insured due to
5 the necessary interruption of the Insured's business
6 due to prevention of ingress to or egress from an
7 Insured Location, whether or not the premises or
property of the Insured is damaged, provided that
such prevention is a direct result of physical
damage of the type insured by this Policy, to the
kind of property not excluded by this Policy.

8 (UF 9.) As explained below, CCDOA cannot meet the prerequisites of coverage.

9 **a. The Damage to the World Trade Center and Pentagon Did Not**
10 **Prevent Ingress to or Egress From CCDOA's Airports.**

11 An insurance "policy must be read as a whole in order to give a reasonable
12 and harmonious meaning and effect to all its provisions." *Nat'l Union Fire Ins. Co.*
13 *v. Reno's Exec. Air, Inc.*, 682 P.2d 1380, 1383 (Nev. 1984). Where, as here, contract
14 language is unambiguous, a court cannot, under the guise of interpretation, distort
15 the plain meaning of the contract. *Watson v. Watson*, 596 P.2d 507, 508 (Nev.
16 1979).

17 The Ingress/Egress coverage requires that the "prevention" of ingress to or
18 egress from an insured location be "a *direct* result of physical damage of the type
19 insured."² A "direct" result is one "[m]arked by absence of an intervening agency,
20 instrumentality, or influence . . ." *Webster's Third New International Dictionary*
21 640 (1993). In contrast, an "indirect" result is one "not resulting directly from an
22 action or cause." *Id.* at 1151.

23 Here, the alleged "prevention" of ingress to and egress from CCDOA's
24 airports did not result directly from the damage to the World Trade Center and
25 Pentagon. Thus, the alleged "prevention" was not the "direct result" of any physical
26 damage. Rather, and as conceded by CCDOA's Rule 30(b)(6) designee, CCDOA's
27

28 ² "Ingress" means "the act of entering," and "egress" means "the act or right
of going or coming out." *Webster's Third New International Dictionary* 727, 1162 (1993).

1 claimed loss of access to its airports was the “direct result” of the FAA’s orders.
 2 (UF 40, 50.) Accordingly, there is no coverage.

3 **b. “Prevention” Requires a Physical Prevention of Ingress or Egress.**

4 “Prevent” means “to keep from happening or existing . . . make impossible
 5 through advance provisions . . . to hold or keep back (one about to act): HINDER,
 6 STOP . . . to make something impossible . . . PREVENT implies an insurmountable
 7 obstacle or impediment.” *Webster’s Third New International Dictionary* 1798
 8 (1993). “Prevention” similarly means “the act of preventing or hindering:
 9 obstruction or thwarting of action, access, or approach.” *Id.*

10 Hence, for coverage to exist, there must be some “obstruction” or “thwarting
 11 of . . . access” that occurs “as a direct result of physical damage of the type insured.”
 12 It follows that there must be a *physical* prevention of ingress or egress.

13 Indeed, had “prevention” in the Ingress/Egress coverage meant to include an
 14 order of civil authority forbidding access, the word “*prohibited*,” would have been
 15 used—just as it is used in the Civil Authority coverage. The word “prohibit” means
 16 “to forbid by authority or command.” *Id.* at 1813. Notably, CCDOA’s Rule
 17 30(b)(6) designee used the word “prohibited” to describe the effect of the FAA
 18 orders on access to CCDOA’s airports:

19 Q. . . . Can you describe the manner in which CCDOA
 20 claims that ingress to or egress from its airports was
 prevented on September 11, 2001?

21 A. First off, all airplanes were *prohibited* by federal
 22 order from flying, so no airplanes could arrive at our
 airport or leave from our airport under federal order. . . .
 (UF 50.)

23 Q. What prevented a plane from taking off from any of
 24 the CCDOA airports on September 11 after the order?

25 A. It was in violation of federal directives.

26 Q. There was nothing wrong with the runways at any
 27 of the airports, right?

28 A. No, runways all functioned fine.

1 Q. But there was an order from the FAA that said planes could not
2 take off, right?

3 A. Planes were *prohibited* from being in the air space,
4 so therefore they couldn't take off or land.

(UF 52.)

5 The fact remains that the FM policy draws a distinction between "*prevention*"
6 and "*prohibits*" when used to describe a lack of access. And this confirms that the
7 Civil Authority and Ingress/Egress coverage provisions are mutually exclusive and
8 apply in different situations. Specifically, the Civil Authority coverage applies only
9 where access is *prohibited* by an order of civil authority. In contrast, the
10 Ingress/Egress coverage applies only where there is a physical *prevention* of access.

11 To summarize, the word "prevention" as used in the FM Policy's
12 Ingress/Egress provision means physical prevention and not a governmental order
13 prohibiting access. While the FAA's September 11 orders may have *prohibited*
14 planes from taking off and landing, they did not *prevent* them from doing so. An
15 airplane could take off or land. And that in fact occurred: a FAA controller cleared
16 a Federal Express airplane for take off from an airport in Great Falls, Montana after
17 the FAA groundstop order was issued. (UF 53.)

18 Similarly, the FAA specifically allowed certain aircraft to take off and land
19 after issuance of the FAA ground stop order and before the September 13 reopening
20 of the nation's airspace, including aircraft carrying medical supplies and Federal
21 Reserve checks. (UF 53.) And on September 12—during the time that CCDOA
22 claims that ingress to or egress from its airports was "prevented"—aircraft that were
23 diverted on September 11 were allowed to continue to their original destinations.
24 (UF 48.) There were two or three such aircraft that took off or landed at CCDOA's
25 McCarran airport on September 12. (UF 54.)

26 In short, there was no "prevention" of ingress to or egress from CCDOA's
27 airports. Summary judgment must be granted.

1 **4. CCDOA's Interpretation of the Ingress/Egress Coverage Improperly**
2 **Contradicts Well-Settled Principles of Construction that Contracts**
3 **Should Be Construed So As to Avoid Rendering Portions of Them**
4 **Superfluous.**

5 Because CCDOA cannot establish coverage under the Civil Authority
6 provision (because the FAA orders were not issued as a direct result of physical
7 damage at or within 1,000 feet of its airports), CCDOA now interprets the
8 Ingress/Egress coverage to apply where an order of civil authority prohibits access
9 to an insured location. But as discussed below, this interpretation improperly
10 renders the entire Civil Authority coverage meaningless, which is contrary to settled
11 Nevada law.

12 In Nevada, an insurance "policy must be read as a whole in order to give a
13 reasonable and harmonious meaning and effect to all its provisions." *Nat'l Union*
14 *Fire Ins. Co. v. Reno's Exec. Air, Inc.*, 682 P.2d 1380, 1383 (Nev. 1984). Thus, a
15 "basic rule of contract interpretation is that '[e]very word must be given effect if at
16 all possible.'" *Musser v. Bank of Am.*, 964 P.2d 51, 54 (Nev. 1998) (quoting in part
17 *Royal Indem. Co. v. Special Serv.*, 413 P.2d 500, 502 (Nev. 1966)). "A court should
18 not interpret a contract so as to make meaningless its provisions." *Phillips v.*
19 *Mercer*, 579 P.2d 174, 176 (Nev. 1978).

20 As demonstrated above, the Civil Authority and Ingress/Egress coverages are
21 two separate, distinct, and mutually exclusive coverages that apply in different
22 situations: the Civil Authority coverage applies only where access is *prohibited* by
23 an order of civil authority, while the Ingress/Egress coverage applies only where
24 there is a physical *prevention* of access.

25 This distinction has been recognized by courts and commentators. As one
26 commentator explained:

- 27 • **Civil Authority Coverage.** This coverage insures
28 the policyholder against lost business income and
 expenses resulting when a governmental authority denies
 access to the policyholder's premises. This coverage may

1 require that damage has been sustained to other property.

2 * * *

- 3 • **Ingress/Egress Coverage.** This coverage protects
4 against lost business income and extra expense when the
policyholder's premises are inaccessible for a reason
other than governmental action or authority.

5 See Lorelie S. Masters, *Terrorism Insurance*, Legal Times, Apr. 15, 2002, at 31,
6 available at LEXIS, News & Business Library, Legal Times File.

7 Thus, Civil Authority coverage applies where a governmental authority
8 prohibits access to the insured premises. See, e.g., *Sloan v. Phoenix of Hartford Ins.*
9 *Co.*, 207 N.W.2d 434 (Mich. Ct. App. 1973) (governor ordered curfew and closure
10 of places of amusement after widespread rioting which prohibited access to
11 insured's movie theaters). In contrast, Ingress/Egress coverage applies where a
12 reason other than an order of civil authority—namely physical loss or
13 damage—prevents access to the insured's premises. See, e.g., *Fountain Powerboat*
14 *Indus., Inc. v. Reliance Ins. Co.*, 119 F. Supp. 2d 552 (E.D.N.C. 2000) (flood
15 blocked access roads).

16 If, as CCDOA now claims, the Ingress/Egress provision also applies when an
17 order of civil authority (allegedly issued as direct result of physical damage)
18 “prevented” ingress or egress to the insured premises, there would never be a need
19 to resort to the Civil Authority coverage because such coverage is already available
20 under the Ingress/Egress provision. Additionally, applying the Ingress/Egress
21 provision to provide coverage where an order prohibiting access is not the result of
22 physical damage at or within 1,000 feet of the insured location would render that
23 limitation in the Civil Authority provision meaningless. In short, CCDOA's
24 interpretation renders superfluous the entire Civil Authority provision. But that
25 “interpretation contradicts the principle discussed above, that contracts should be
26 construed so as to avoid rendering portions of them superfluous.” *Musser v. Bank*
27 *of Am.*, 964 P.2d 51, 54 (Nev. 1998).

1 Accordingly, CCDOA's attempt to create a second civil authority coverage
2 provision—but one without limits under the Ingress/Egress provision—must be
3 rejected.

4 **5. The FAA Orders Were Not Issued as the Direct Result of Physical**
5 **Damage.**

6 CCDOA argues that there is Ingress/Egress coverage because the FAA orders
7 were issued as a direct result of physical damage to the World Trade Center and
8 Pentagon. This argument, however, is irrelevant and fails for at least three reasons:
9 (1) CCDOA's claimed prevention of ingress and egress was caused by orders of
10 civil authority, and the Civil Authority coverage does not apply because the FAA
11 orders were not issued as a direct result of physical loss or damage at or within
12 1,000 feet of any CCDOA airport; (2) there was no physical prevention of access as
13 required by the Ingress/Egress provision; and (3) CCDOA's interpretation of the
14 Ingress/Egress provision improperly renders superfluous the policy's Civil
15 Authority coverage. But in addition, CCDOA is just wrong.

16 **a. The FAA's Ground Stop Order Was Issued For Reasons of Safety.**

17 The ground stop order—a traffic management tool—was issued by FAA
18 National Operations Manager Ben Sliney. (UF 25, 29.) As National Operations
19 Manager, Sliney's mandate was to insure the safe and efficient operation of the
20 national airspace system and, thus, he had authority to issue orders to insure the safe
21 and efficient operation of the national airspace system. (UF 18, 19.) Thus, safety
22 and efficiency were what concerned Mr. Sliney.

23 And safety was the reason for the ground stop order. Indeed, after American
24 Flight 11 was hijacked, Mr. Sliney learned of a radio transmission from that plane
25 to the effect that "we have more planes." (UF 20.) Consequently, the FAA was
26 concerned that additional planes had been hijacked. In fact, the FAA was tracking
27 all "suspicious" aircraft and recording them on a status board. (UF 23.) At one
28 point, there were as many as 10-12 planes on this status board. (UF 24.)

1 After the second crash into the World Trade Center, Mr. Sliney was
2 concerned that hijacked aircraft were being used as guided missiles. (UF 27.) And
3 when it became apparent that there were guided missiles flying around, the FAA
4 decided to stop aircraft from taking off, first in New York, then Boston, then Los
5 Angeles, then most of the East Coast, and finally, at 9:26 a.m., a national ground
6 stop. (UF 25, 28.) Mr. Sliney issued the national ground stop order pursuant to his
7 mandate to insure the safe and efficient operation of the national airspace system.
8 (UF 30.)

9 Furthermore, "safety" was cited as the reason for the order in the FAA's
10 NOTAM, which "reaffirmed" its earlier orders:

11 FDC SPECIAL NOTICE. DUE TO EXTRAORDINARY
12 CIRCUMSTANCES AND FOR REASONS OF
13 SAFETY, ATTENTION ALL AIRCRAFT
14 OPERATORS, BY ORDER OF THE FEDERAL
15 AVIATION COMMAND CENTER ALL
16 AIRPORTS/AIRDROMES ARE NOT AUTHORIZED
17 FOR LANDING AND TAKEOFF. ALL TRAFFIC
18 INCLUDING AIRBORNE AIRCRAFT ARE
19 ENCOURAGED TO LAND SHORTLY. . .

20 (UF 34.)

21 As the NOTAM "reaffirming" the earlier orders makes clear, safety was the
22 reason for the orders. This NOTAM says nothing about the damage to the World
23 Trade Center or Pentagon and instead expressly references "for reasons of safety."

24 This safety-related concern was cited again by Secretary of Transportation
25 Norman Mineta in his September 20, 2001 Congressional testimony:

26 On the morning of September 11th, on the first word of
27 the attack, I moved directly to the Presidential Emergency
28 Operations Center in the White House. As soon as I was
aware of the nature and scale of the attack, I called from
the White House to order the air traffic system to land all
aircraft, immediately and without exception. That was an
unprecedented step. *But with the risk of additional flights
that might be used as terrorist weapons, I believe that it
was the right and necessary step to take.*

(UF 35.)

1 Similarly, FAA Administrator Jane F. Garvey testified before Congress that
2 the air operations were shut down because of the risk of additional hijackings:

3 On the morning of September 11th, there were 4,873
4 instrument flight rule (IFR) flights operating in U.S.
5 airspace. As soon as Secretary Mineta was aware of the
6 nature and scale of the terrorist attack on New York and
7 Washington—that we were faced with, not one, but four
possible hijackings, and several other rumors of missing
or unidentified aircraft—the Secretary ordered the air
traffic system shut down for all civil operations.

8 (UF 36.)

9 In sum, the ground stop order was issued for reasons of safety not because of
10 damage to the World Trade Center or Pentagon. That is precisely what the Court
11 in *City of Chicago* found:

12 The ground stop order was ultimately imposed to protect
13 against any further terrorist attacks like those that
damaged and/or destroyed the World Trade Center and
the Pentagon.

14 *City of Chicago*, 2004 U.S. Dist. LEXIS 4266, at *12.

15 To be sure, the damage to the World Trade Center and Pentagon had already
16 occurred and there would be no rational safety reason to stop all take offs and
17 landings across the United States because of that already-existing damage. But there
18 was a valid safety-related concern that other aircraft may be hijacked and used in a
19 terrorist act. And this safety-related concern about possible additional hijackings
20 and terrorist acts was indisputably the reason for the FAA's order.

21 **b. The FAA Order to Comply With New Security Directives Was**
22 **Issued For Reasons of Safety.**

23 CCDOA's Rule 30(b)(6) designee also claimed that ingress to and egress from
24 CCDOA airports was "prevented" because "the terminal needed to be vacated for
25 security reasons, so the terminal was closed to all nonbadged individuals, and the
26 roadways into the airport were blocked and – to allow the airport to be able to have
27 control of the airport in a sterile environment and be able to do its security checks
28 in accordance with the FAA directives." (UF 50.) Again, CCDOA—which bears

1 the burden of proof—can proffer no evidence that this FAA order was the direct
2 result of any physical damage.

3 Indeed, CCDOA's Deputy Director of Aviation Rosemary Vassiliadis testified
4 that these measures were undertaken to "assure the best that we could that there
5 wasn't an act of terrorism being planned for that location." (UF 45.) In other
6 words, this FAA order was issued for reasons of safety.

7 **c. The Ground Stop Order Was Extended For Reasons of Safety.**

8 On September 12, 2001, the FAA temporarily extended the ground stop order
9 imposed on September 11. Again, CCDOA can proffer no evidence whatsoever that
10 this order was the "direct result" of the damage to the World Trade Center or
11 Pentagon. Like the other FAA orders, the ground stop was extended for reasons of
12 safety. To be sure, Transportation Secretary Mineta extended the ground stop order
13 "while additional security measures are being completed." (UF 48.) These
14 additional security measures included: establishment of a 300-foot perimeter for
15 parked vehicles; suspension of curbside check-ins; more frequent searches of carry-
16 on baggage; increased presence of uniformed and plainclothes security personnel;
17 and allowing only passengers with a flight ticket and identification past the security
18 gates. (UF 46.)

19 These additional security measures were intended to reduce the likelihood of
20 aircraft being hijacked and used in a terrorist attack. (UF 47.) In fact, when he
21 announced the order extending the ground stop, Secretary Mineta said that "Safety
22 is always of paramount importance, and in these extraordinary times we intend to
23 be vigilant." (UF 48.) And as FAA National Operations Manager Ben Sliney put
24 it, the FAA was going to permit only those aircraft that it "deemed to be secure
25 enough not to become a guided missile" to "fly in the national air space system"
26 (UF 47.)

27 In short, there is no evidence that the order extending the September 11
28 ground stop was issued as a "direct result" of any physical damage.

1 **6. The Contingent Time Element Coverage Does Not Apply Because**
 2 **CCDOA Did Not Sustain Any Business Interruption Loss Directly**
 3 **Resulting From Physical Damage to Property at a Direct Customer or**
 4 **Supplier Location.**

5 CCDOA also seeks coverage under the Contingent Time Element coverage:

6 **A. CONTINGENT TIME ELEMENT**

7 This Policy covers the Actual Loss Sustained and
 8 EXTRA EXPENSES incurred by the Insured
 during the PERIOD OF LIABILITY:

- 9 1) directly resulting from physical loss or
 10 damage of the type insured; and
 11 2) to property of the type insured, at any
 12 locations of direct suppliers or customers
 located within the TERRITORY of this
 Policy.

13 For Contingent Time Element coverage to apply, CCDOA must prove that its
 14 alleged business income and extra expense losses were the *direct* result of physical
 15 loss or damage of the type insured to property of the type insured at locations of
 16 CCDOA's *direct* suppliers or customers.

17 To that end, CCDOA relies on damage to a Delta Airlines ticket office and
 18 several travel agencies located in the World Trade Center. (UF 40.)³ But as
 19 CCDOA concedes, its airports were not closed because of the damage to the Delta
 20 ticket office and travel agencies, but rather "because of the orders from the Federal
 21 Aviation Administration that shut down the national air system." (UF 40.)

22 Hence, The Contingent Time Element coverage does not apply because
 23 CCDOA did not sustain any business interruption loss directly resulting from
 24 physical damage to property at a direct customer or supplier location.

25
 26
 27 ³ FM does not concede that the Delta ticket office and travel agencies are
 28 "direct suppliers or customers" within the meaning of the Contingent Time Element
 coverage.

7. **The Protection and Preservation of Property Provision Does Not Apply Because There Was No Immediately Impending Physical Damage at CCDOA's Airports.**

CCDOA also seeks coverage under the FM policy's "Protection and Preservation of Property – Time Element" provision:

E. PROTECTION AND PRESERVATION OF PROPERTY – TIME ELEMENT

This policy covers the Actual Loss Sustained by the Insured for a period of time not to exceed 48 hours prior to and 48 hours after the Insured first taking reasonable action for the temporary protection and preservation of property insured by this Policy provided such action is necessary to prevent immediately impending physical loss or damage insured by this Policy at such insured property.

(UF 10.)

Thus, this coverage applies only where the insured's business operations were interrupted because the insured took reasonable measures to temporarily protect its property from immediately impending physical loss or damage. But CCDOA concedes that there was no immediately impending physical loss or damage to any CCDOA property. (UF 39.) Therefore, there is no coverage.

8. **CCDOA's Claims are Barred by the FM Policy's Remote and Indirect Loss Exclusion.**

The FM policy excludes coverage for any indirect or remote loss:

5. EXCLUSIONS

The following exclusions apply unless specifically stated elsewhere in this Policy:

A. This Policy excludes:

1. indirect or remote loss or damage.

(UF 11.)

"Indirect" loss is one "not resulting directly from an action or cause." *Webster's Third New International Dictionary* 1151 (1993). Similarly, a "remote" loss is one that does "not aris[e] from the effect of that which is primary or

proximate in its action.” *Id.* at 1921.

CCDOA’s alleged loss—which it claims was caused by physical damage to the World Trade Center and Pentagon located more than 2,000 miles away from its airports—is a classic indirect and remote loss. In fact, the court in the *City of Chicago* matter reached that very conclusion:

An examination of the listed damage exclusions reveals that ‘indirect or remote loss or damage’ is excluded by the policy. (*Id.* at 29.) Thus, although ingress to and egress from the airport[s] were prevented by the FAA’s order and were indirectly caused by terrorist-inflicted damage, this damage is one of the types of damage excluded by this policy in that it was indirect and remote damage inflicted upon the World Trade Center and the Pentagon.

City of Chicago, 2004 U.S. Dist. LEXIS 4266, at *7-8. Thus, CCDOA’s claims are excluded.

9. Summary Judgment is Appropriate on CCDOA’s Unfair Claims Settlement Practices and Bad Faith Claims.

CCDOA’s third and fourth claims for relief are for unfair claim settlement practices under Nevada Revised Statute section 686A.310 and bad faith.

Nevada recognizes the existence of an implied covenant of good faith and fair dealing in every insurance contract. *See, e.g., Pemberton v. Farmers Ins. Exch.*, 858 P.2d 380, 382 (Nev. 1993). But to prevail on a bad faith claim, an insured must prove not only that the insurer’s denial was without any reasonable basis but that “an actual or implied awareness of the absence of a reasonable basis for denying benefits of the policy.” *Am. Excess Ins. Co. v. MGM Grand Hotels, Inc.*, 729 P.2d 1352, 1354-55 (Nev. 1986).

Where an insurer had a reasonable basis to deny the insured’s claim, that insurer cannot be found liable for either violating the Unfair Claims Settlement Practices statute or bad faith as a matter of law. *See, e.g., Hummel v. Cont’l Cas. Ins. Co.*, 254 F. Supp. 2d 1183, 1192 (D. Nev. 2003) (Hicks, J.).

In *Hummel*, for example, the insured sought life insurance benefits after her daughter died after overdosing on prescription pain killers. Continental, however,

1 denied coverage based on an exclusion “for any loss caused by or resulting from
 2 . . . (8) alcoholic intoxication or influence of drugs unless taken as prescribed by a
 3 physician.” *Id.* at 1185. Hummel sued for breach of contract, bad faith, and for
 4 violations of the Unfair Claims Settlement Practices statute. *Id.* The Court found
 5 the exclusion to be ambiguous and contrary to required statutory language. *Id.* at
 6 1188-90. Nevertheless, the Court granted summary judgment to Continental on
 7 Hummel’s bad faith and Unfair Claims Settlement Practices statute claims because
 8 Continental’s interpretation of its policy was reasonable. *Id.* at 1191-92.

9 Here, FM’s interpretation of its policy was not only reasonable, it is also
 10 correct. Accordingly, summary judgment is appropriate on the unfair claim
 11 settlement practices and bad faith claims.

12 **10. Summary Judgment Must Be Granted on CCDOA’s Punitive Damages**
 13 **Claim Because There is No Evidence of Any Oppression, Fraud, or**
 14 **Malice.**

15 Finally, CCDOA asserts a claim for punitive damages. Punitive damages
 16 require more than “bad faith.” *United States Fid. & Guar. Co. v. Peterson*, 540 P.2d
 17 1070, 1072 (Nev. 1975) (merely prevailing on a bad faith claim does not entail a
 18 showing of sufficient abuse for the awarding of punitive damages). Instead,
 19 punitive damages are available only where “it is proven by clear and convincing
 20 evidence that the defendant has been guilty of oppression, fraud, or malice.” Nev.
 21 Rev. Stat. § 42.005, subd. (1).

22 Here, and as demonstrated above, CCDOA cannot survive summary judgment
 23 on its bad faith claim. Obviously, “a plaintiff who is not able to survive summary
 24 judgment on an insurance bad faith claim, is also unable to survive summary
 25 judgment on a related claim for punitive damages.” *Adams v. Allstate Ins. Co.*, 187
 26 F. Supp. 2d 1207, 1219 (C.D. Cal. 2002). In any event, there is no evidence, let
 27 alone the required clear and convincing evidence, that FM is guilty of oppression,
 28 fraud, or malice. Thus, summary judgment must be granted on this claim.

D. Conclusion

As explained above, the Ingress/Egress coverage applies only when ingress to or egress from an insured location has been prevented and only when that prevention is the direct result of physical damage. Here, the damage to the World Trade Center and Pentagon, located over 2,000 miles away, did not prevent ingress to and egress from CCDOA's airports. Instead, the alleged "prevention" of access was admittedly the direct result of FAA orders. And where access is not prevented by physical damage, but is instead prohibited by order of civil authority, coverage, if any, is provided only under the Civil Authority provision. But this coverage does not apply here because the orders of civil authority were not issued as a direct result of physical damage and because there was no physical damage at or within 1,000 feet of the insured location as required by the policy. CCDOA's contention that the Ingress/Egress provision applies when an order of civil authority "prevented" ingress or egress to the insured premises cannot be accepted because it improperly renders the Civil Authority coverage superfluous.

Additionally, the Contingent Time Element coverage does not apply because CCDOA did not sustain any business interruption loss directly resulting from physical damage to property at a direct customer or supplier location. Similarly, the Protection and Preservation of Property provision does not apply because there was no immediately impending physical damage at CCDOA's airports. Lastly, CCDOA's claims are barred by the policy's Remote and Indirect Loss exclusion.

Because CCDOA cannot meet its burden of proving coverage under the FM policy, summary judgment must be granted on all claims.

DATED: May 26, 2004

ROBINS, KAPLAN, MILLER & CIRESI L.L.P.

By: 

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11
12 IN THE UNITED STATES DISTRICT COURT
13 FOR THE DISTRICT OF NEVADA

14 COUNTY OF CLARK, a political)
subdivision of the State of Nevada, on)
15 behalf of Clark County Department of)
Aviation,)

16 Plaintiff,

17 vs.

18 FACTORY MUTUAL INSURANCE)
19 COMPANY, a Rhode Island)
Corporation, and DOES 1-10,)

20 Defendant.
21

Case No: CV-S-02-1258-KJD-RJJ

**FACTORY MUTUAL INSURANCE
COMPANY'S STATEMENT OF
UNCONTROVERTED FACTS IN
SUPPORT OF ITS MOTION FOR
SUMMARY JUDGMENT**

[Notice of Motion and Motion for
Summary Judgment and Supporting
Memorandum of Points and Authorities;
Affidavit of Scott G. Johnson; and
Proposed Order filed concurrently
herewith]

22 Pursuant to Local Rule 56-1, Defendant FACTORY MUTUAL INSURANCE
23 COMPANY ("FM") submits the following statement of facts that are not genuinely
24 in issue along with the evidence upon which FM relies.
25

26 ///

27 ///

28 ///

1 **A. CCDOA and the FM Insurance Coverage.**

2 1. Plaintiff CLARK COUNTY DEPARTMENT OF AVIATION
3 ("CCDOA") operates McCarran International Airport, North Las Vegas Airport,
4 Henderson Executive Airport, Jean Sport Aviation Center, Overton-Perkins Field,
5 and Searchlight Airfield.

6 **[CCDOA Complaint at ¶ 5, attached as Exhibit "1" to**
7 **Affidavit of Scott G. Johnson.]**

8 2. FACTORY MUTUAL INSURANCE COMPANY ("FM") issued a
9 first-party property insurance policy to CCDOA effective October 1, 2000.

10 **[CCDOA Complaint at ¶ 9, attached as Exhibit "1" to**
11 **Affidavit of Scott G. Johnson.]**

12 3. The FM policy provided coverage for both property damage and time
13 element (e.g., business interruption and extra expense) losses, subject to the policy's
14 terms, conditions, exclusions, and limitations.

15 **[FM Policy, attached as Exhibit "A" to CCDOA**
16 **Complaint .]**

17 4. The property damage section of the policy generally provided coverage
18 for physical loss or damage to specified property of CCDOA caused by a non-
19 excluded risk.

20 **[FM Policy at pp. 7-24 , attached as Exhibit "A" to**
21 **CCDOA Complaint.]**

22 5. The FM policy included the following provision:

23 **TIME ELEMENT - SECTION C**

24 **1. LOSS INSURED**

25 A. This Policy insures TIME ELEMENT loss,
26 as provided in the TIME ELEMENT
27 COVERAGES, directly resulting from
28 physical loss or damage of the type insured
 by this Policy:

- 1) to property described elsewhere in this Policy and not otherwise excluded by this Policy or otherwise limited in the TIME ELEMENT COVERAGES below;
- 2) used by the Insured, or for which the Insured has contracted use;
- 3) located at an Insured Location; and
- 4) during the Periods of Liability described in this section.

[FM Policy at p. 25, attached as Exhibit "A" to CCDOA Complaint.]

6. The FM policy included the following provision:

2. TIME ELEMENT COVERAGES

A. GROSS EARNINGS

- 1) Measurement of Loss:
 - a) The recoverable GROSS EARNINGS loss is the Actual Loss Sustained by the Insured of the following during the PERIOD OF LIABILITY:
 - (i) Gross Earnings;
 - (ii) less all charges and expenses that do not necessarily continue during the interruption of production or suspension of business operations or services;
 - (iii) less ordinary payroll;
 - (iv) plus all other earnings derived from the operation of the business.

[FM Policy at pp. 25-26 , attached as Exhibit "A" to CCDOA Complaint.]

1 7. The FM policy included the following provision:

2 **4. PERIOD OF LIABILITY**

3 A. The PERIOD OF LIABILITY applying to
4 all TIME ELEMENT COVERAGES, except
5 LEASEHOLD INTEREST and as shown
6 below, or if otherwise provided under the
7 TIME ELEMENT COVERAGE
8 EXTENSIONS, is as follows:

9 * * *

10 8) If an order of civil authority prohibits
11 access to the Insured Location and
12 provided such order is the direct
13 result of physical damage of the type
14 insured against under this Policy at
15 the Insured Location or within 1,000
16 feet of it, the period of time:

17 a) starting at the time of such
18 physical damage; but

19 b) not to exceed 30 consecutive days.

20 **[FM Policy at pp. 33, 35 , attached as Exhibit "A to
21 CCDOA Complaint.]**

22 8. The FM policy includes the following time element coverage
23 extensions:

24 **3. TIME ELEMENT COVERAGE EXTENSIONS**

25 **A. CONTINGENT TIME ELEMENT**

26 This Policy covers the Actual Loss
27 Sustained and EXTRA EXPENSES incurred
28 by the Insured during the PERIOD OF
29 LIABILITY:

30 1) directly resulting from physical loss
31 or damage of the type insured; and

32 2) to property of the type insured,

33 at any locations of direct suppliers or
34 customers located within the TERRITORY
35 of this Policy.

36 The term "supplier or customer" does not
37 include any company supplying to or

1 receiving from the Insured Location, as
2 described elsewhere in this Policy,
3 electricity, fuel, gas, water, steam,
refrigeration, sewage or
telecommunications.

4 [FM Policy at p. 30, attached as Exhibit "A" to
5 CCDOA Complaint.]

6 9. The FM policy included the following time element coverage
7 extensions:

8 **3. TIME ELEMENT COVERAGE EXTENSIONS**

9 * * *

10 **C. INGRESS/EGRESS**

11 This Policy covers the Actual Loss
12 Sustained and EXTRA EXPENSE incurred
13 by the Insured due to the necessary
14 interruption of the Insured's business due to
15 prevention of ingress to or egress from an
16 Insured Location, whether or not the
premises or property of the Insured is
damaged, provided that such prevention is a
direct result of physical damage of the type
insured by this Policy, to the kind of
property not excluded by this Policy.

17 [FM Policy at p. 31, attached as Exhibit "A" to
18 CCDOA Complaint.]

19 10. The FM policy included the following time element coverage:

20 **2. TIME ELEMENT COVERAGES**

21 * * *

22 **E. PROTECTION AND PRESERVATION
OF PROPERTY – TIME ELEMENT**

23 The Policy covers the Actual Loss Sustained
24 by the Insured for a period of time not to
25 exceed 48 hours prior to and 48 hours after
26 the Insured first taking reasonable action for
27 the temporary protection and preservation of
28 property insured by this Policy provided
such action is necessary to prevent
immediately impending physical loss or
damage insured by this Policy at such
insured property.

1 [FM Policy at p. 31, attached as Exhibit "A" to
2 CCDOA Complaint.]

3 11. The FM policy included the following provision:

4 **5. EXCLUSIONS**

5 The following exclusions apply unless specifically
6 stated elsewhere in this Policy:

7 A. This Policy excludes:

8 1. indirect or remote loss or damage.

9 [FM Policy at p. 21, attached as Exhibit "A" to
10 CCDOA Complaint.]

11 **B. The Events of September 11, 2001.**

12 12. At approximately 8:00 a.m. EDT on September 11, 2001, American
13 Airlines Flight 11, a Boeing 767, took off from Boston's Logan airport for Los
14 Angeles.

15 [The FAA Responds, attached as Exhibit "2" to
16 Affidavit of Scott G. Johnson.]

17 13. At approximately 8:14 a.m. EDT, United Airlines Flight 175, another
18 Boeing 767, also took off from Boston's Logan airport for Los Angeles.

19 [The FAA Responds, attached as Exhibit "2" to
20 Affidavit of Scott G. Johnson.]

21 14. At approximately 8:21 a.m. EDT, American Airlines Flight 77, a
22 Boeing 757, took off from Washington Dulles airport for Los Angeles.

23 [The FAA Responds, attached as Exhibit "2" to
24 Affidavit of Scott G. Johnson.]

25 15. At approximately 8:41 a.m. EDT, United Airlines Flight 93, a Boeing
26 757, took off from Newark airport for San Francisco.

27 [The FAA Responds, attached as Exhibit "2" to
28 Affidavit of Scott G. Johnson.]

1 16. Sometime before 8:46 a.m. EDT, American Airlines Flight 11 was
2 hijacked.

3 **[The FAA Responds, attached as Exhibit "2" to**
4 **Affidavit of Scott G. Johnson.]**

5 17. Benedict Sliney was one of five FAA National Operations Managers
6 and the one on duty on September 11, 2001.

7 **[Deposition of Benedict Sliney at pp. 18:21 - 19:2,**
8 **attached as Exhibit "3" to Affidavit of Scott G.**
9 **Johnson.]**

10 18. FAA National Operations Manager Benedict Sliney testified as follows:

11 Q. . . . I believe you said as national operations manager, you had
12 complete authority over the entire air traffic system during your
13 assigned shift?

14 A. Yes, to ensure the safe and efficient operation of
15 that system, that was my charge and since September 11,
16 they have added secure to that charge, the safe, secure and
17 efficient operation of the national air space system.

18 **[Deposition of Benedict Sliney at p. 19:3-11, attached**
19 **as Exhibit "3" to Affidavit of Scott G. Johnson.]**

20 19. FAA National Operations Manager Benedict Sliney testified as follows:

21 Q. As national operations manager, during your shift,
22 were there any limits to your authority?

23 A. No, not with respect to a lawful order given to
24 ensure the safe and efficient operation of the
25 national air space system.

26 **[Deposition of Benedict Sliney at p. 20:2-7, attached as**
27 **Exhibit "3" to Affidavit of Scott G. Johnson.]**

28 20. After American Airlines Flight 11 was hijacked, FAA National
Operations Manager Benedict Sliney learned of a radio transmission from that plane
to the effect that "we have more planes."

1 **[Deposition of Benedict Sliney at pp. 59:14 - 60:14,**
2 **attached as Exhibit “3” to Affidavit of Scott G.**
3 **Johnson.]**

4 21. At approximately 8:46 a.m. EDT, American Airlines Flight 11 crashed
5 into the north tower of the World Trade Center.

6 **[CCDOA Complaint at ¶ 20, attached as Exhibit “1”**
7 **to Affidavit of Scott G. Johnson.]**

8 22. At approximately 9:02 a.m. EDT, United Airlines Flight 175 crashed
9 into the south tower of the World Trade Center.

10 **[CCDOA Complaint at ¶ 21, attached as Exhibit “1”**
11 **to Affidavit of Scott G. Johnson.]**

12 23. On September 11, 2001 at the FAA National Operations headquarters,
13 the FAA was tracking all “suspicious” aircraft—aircraft that were not on their
14 proper route or were not communicating with the FAA—and recording them on a
15 status board.

16 **[Deposition of Benedict Sliney at pp. 29:8-15, 58:2-13,**
17 **attached as Exhibit “3” to Affidavit of Scott G.**
18 **Johnson.]**

19 24. At one point, there were as many as 10-12 planes on the status board.

20 **[Deposition of Benedict Sliney at p. 44:1-7, attached as**
21 **Exhibit “3” to Affidavit of Scott G. Johnson.]**

22 25. FAA National Operations Manager Benedict Sliney testified as
23 follows:

24 Q. Did anyone direct you to issue that national ground
25 stop or did you issue it on your own authority?

26 A. I don’t like those two choices. No one directed me
27 to issue that national ground stop, no one did.

28 Q. You issued it on your own?

 A. I issued it on my own authority. That’s somewhat

1 – the reason I said I didn't like that choice is because I
 2 listened to and I have available to me the accumulated
 3 wisdom and advice of all those specialists. We regularly
 4 met on that day to discuss alternatives and what we
 5 should do. When it became apparent that there were
 6 essentially missiles flying around, we decided to – we
 7 stopped aircraft from taking off first. We did that in a
 8 series of movements that are somewhat depicted here.
 9 First, we stopped in New York. Then we stopped Boston.
 10 Then we stopped – although I don't see it here, we
 11 stopped Los Angeles because of the connection with the
 12 Los Angeles flights to be sure we stopped everything out
 13 there. Then we stopped almost the whole east coast and
 14 then the national ground stopped. . . .

15 **[Deposition of Benedict Sliney at pp. 40:16 - 41:15,**
 16 **attached as Exhibit "3" to Affidavit of Scott G.**
 17 **Johnson.]**

18 26. FAA National Operations Manager Benedict Sliney testified as
 19 follows:

20 Q. You had made another comment during your
 21 testimony that you said when it was apparent that there
 22 were missiles flying around you stopped aircraft first in

23 New York, Boston, Los Angeles, the east coast and the national ground
 24 stop?

25 A. Yes.

26 Q. What did you mean when you said it was apparent
 27 there were missiles flying around?

28 A. That they were purposefully directing planes into
 buildings or structures or deliberately destroying them. It
 seemed to me in my mind similar to a missile that we had
 no control over.

[Deposition of Benedict Sliney at pp. 57:13 - 58:1,
attached as Exhibit "3" to Affidavit of Scott G.
Johnson.]

27 27. FAA National Operations Manager Benedict Sliney testified as
 28 follows:

Q. You did have a concern there may be other planes
 out there that would be used as guided missiles
 effectively, right?

1 A. Not at that juncture. At that juncture, my concern
2 was what was the import of several high-jackings.

3 Q. After the World Trade Center had been struck not
4 once, but twice, you had a concern?

5 A. Absolutely. That was one of those many factors
6 that was in my mind that I alluded to earlier.

7 Q. One of the many factors that fed into your decision
8 to issue the ground stop order, correct?

9 A. Correct.

10 Q. And the order to direct all planes at the nearest
11 airport, correct?

12 A. Correct.

13 **[Deposition of Benedict Sliney at p. 61:7-23, attached**
14 **as Exhibit "3" to Affidavit of Scott G. Johnson.]**

15 28. The FAA's national ground stop order, which banned takeoffs of all
16 civilian aircraft regardless of destination, was issued at approximately 9:26 a.m.
17 EDT on September 11, 2001.

18 **[Deposition of Benedict Sliney at pp. 38:20 - 39:3,**
19 **attached as Exhibit "3" to Affidavit of Scott G.**
20 **Johnson.]**

21 29. A "ground stop is a traffic management tool."

22 **[Deposition of Benedict Sliney at p. 39:14-15, attached**
23 **as Exhibit "3" to Affidavit of Scott G. Johnson.]**

24 30. FAA National Operations Manager Benedict Sliney testified as follows:

25 Q. You mentioned that you had a mandate, I hope I am
26 stating this correctly. If not, please correct me – to ensure
27 the safe and efficient operation of the air traffic system?

28 A. Of the national air space system.

Q. Then you were asked about what orders you could
give. You could give orders within that mandate, is that
what you said?

A. That is what I said.

1 Q. Like the ground stop order being an example?

2 A. Yes.

3 **[Deposition of Benedict Sliney at p. 57:1-12, attached**
4 **as Exhibit “3” to Affidavit of Scott G. Johnson.]**

5 31. At approximately 9:40 a.m. EDT, American Airlines Flight 77 crashed
6 into the Pentagon.

7 **[CCDOA Complaint at ¶ 23, attached as Exhibit “1”**
8 **to Affidavit of Scott G. Johnson; Deposition of**
9 **Benedict Sliney at p. 44:11-17, attached as Exhibit “3”**
10 **to Johnson Affidavit.]**

11 32. At approximately 9:45 a.m., FAA National Operations Manager
12 Benedict Sliney ordered all aircraft to land at the nearest airport as soon as
13 practical.

14 **[Deposition of Benedict Sliney at p. 45:1-15, attached**
15 **as Exhibit “3” to Affidavit of Scott G. Johnson.]**

16 33. At approximately 10:07 a.m., United Flight 93 crashed in Stony Creek
17 Township, Pennsylvania.

18 **[CCDOA Complaint at ¶ 25, attached as Exhibit “1”**
19 **to Affidavit of Scott G. Johnson.]**

20 34. At 10:39 a.m. EDT, the FAA, reaffirming its earlier orders, issued a
21 Notice to Airmen (NOTAM) that read in part:

22 FDC SPECIAL NOTICE. DUE TO EXTRAORDINARY
23 CIRCUMSTANCES AND FOR REASONS OF
24 SAFETY, ATTENTION ALL AIRCRAFT
25 OPERATORS, BY ORDER OF THE FEDERAL
26 AVIATION COMMAND CENTER ALL
27 AIRPORTS/AIRDROMES ARE NOT AUTHORIZED
28 FOR LANDING AND TAKEOFF. ALL TRAFFIC
INCLUDING AIRBORNE AIRCRAFT ARE
ENCOURAGED TO LAND SHORTLY. . . .

**[CCDOA Complaint at ¶ 22, attached as Exhibit “1”
to Affidavit of Scott G. Johnson; *The FAA Responds*,
attached as Exhibit “2” to Johnson Affidavit.]**

35. Transportation Secretary Mineta provided the following testimony
before Congress on September 20, 2001:

On the morning of September 11th, on the first word of
the attack, I moved directly to the Presidential Emergency
Operations Center in the White House. As soon as I was
aware of the nature and scale of the attack, I called from
the White House to order the air traffic system to land all
aircraft, immediately and without exception. That was an
unprecedented step. But with the risk of additional flights
that might be used as terrorist weapons, I believe that it
was the right and necessary step to take.

* * *

Of course, as we move forward, we must dramatically
alter our approach. As President Bush has said: the world
has changed. I add: so too has the very nature of our
national transportation system.

The events of the past several days requires us to take
new steps to move people and commerce safely and
efficiently, despite the fact that the nature of the threat has
clearly changed. It is a mission we cannot afford to leave
for a later time.

This Administration is already moving to restore and
enhance our air transportation system. On September
13th, I announced the gradual restoration of flights within
the national airspace system. We took immediate steps to
develop heightened security measures to ensure the safety
of airline passengers as well as people on the ground.

* * *

Because safety is of paramount importance, I required
that heightened security measures be in place before any
air service resumed. A thorough search and security
check of all airplanes and airports took place before
passengers are allowed to enter and board aircraft.

* * *

We now face a different security threat not only in
transportation, but in all aspects of American life. We
have to be willing to meet that changed threat with
additional counter-measures, and still find ways to keep
our transportation systems the efficient and vital

1 circulation system of our economy. We must therefore
2 judge our security options in a different light than we
might have judged them in the past.

3 **[Statement of Norman Y. Mineta, Secretary of**
4 **Transportation, Before the Senate Committee on**
5 **Commerce, Science, and Transportation at 1 (Sept. 20,**
6 **2001), attached as Exhibit “4” to Affidavit of Scott G.**
7 **Johnson).]**

8 36. FAA Administrator Jane F. Garvey gave the following testimony before
9 Congress:

10 On the morning of September 11th, there were 4,873
11 instrument flight rule (IFR) flights operating in U.S.
12 airspace. As soon as Secretary Mineta was aware of the
13 nature and scale of the terrorist attack on New York and
14 Washington—that we were faced with, not one, but four
possible hijackings, and several other rumors of missing
or unidentified aircraft—the Secretary ordered the air
traffic system shut down for all civil operations. . . .

15 In response to last week’s unprecedented attacks, the
16 FAA substantially increased the required security
17 measures for U.S. airports and U.S. air carriers and
foreign carriers with flights to the U.S. These measures
were implemented immediately. Some are visible to the
public, others are not.

18 **[Statement of Jane F. Garvey, FAA Administrator,**
19 **Before the House Subcommittee on Aviation,**
20 **Committee on Transportation and Infrastructure, on**
21 **Aviation Security Following the Terrorist Attack on**
22 **September 11th at 2 (Sept. 21, 2001), attached as**
23 **Exhibit “5” to Affidavit of Scott G. Johnson).]**

24 37. CCDOA’s Director of Aviation Randall H. Walker was designated to
25 testify on behalf of CCDOA in response to FM’s Rule 30(b)(6) deposition notice to
26 CCDOA on the following subject matters:

- 27 1. All orders on which CCDOA bases any claim for damages in this
28 litigation including, but not limited to, the date of each such order, the

1 agency issuing each such order, the identity of the recipient of each
2 such order, and the actions taken by CCDOA in response to each such
3 order;

4 2. The manner by which CCDOA claims that ingress to or egress from its
5 airports was prevented on September 11-13, 2001;

6 3. The existence of any physical loss or damage to property at any of
7 CCDOA's airports on September 11, 2001;

8 4. The existence of any immediately impending physical loss or damage
9 to property at any of CCDOA's airports on September 11, 2001;

10 5. The existence of any physical loss or damage to property at locations
11 of CCDOA's direct suppliers or customers on September 11, 2001;

12 6. The extent of any loss or damage to CCDOA caused by any physical
13 loss or damage to property at locations of CCDOA's direct suppliers
14 or customers on September 11, 2001.

15 **[Deposition of Randall H. Walker at p. 10:8-17,**
16 **attached as Exhibit "6" to Affidavit of Scott G.**
17 **Johnson; Rule 30(b)(6) Deposition Notice to CCDOA,**
18 **attached as Exhibit "7" to Johnson Affidavit.]**

19 38. No CCDOA property was damaged on September 11, 2001.

20 **[Deposition of Randall H. Walker at p. 30:1-10,**
21 **attached as Exhibit "6" to Affidavit of Scott G. Johnson.]**

22 39. There was no immediately impending physical loss or damage at any
23 of CCDOA's airports on September 11, 2001.

24 **[Deposition of Randall H. Walker at p. 30:11-22,**
25 **attached as Exhibit "6" to Affidavit of Scott G.**
26 **Johnson; Deposition of Rosemary Vassiliadis at p.**
27 **27:20-23, attached as Exhibit "8" to Johnson**
28 **Affidavit.]**

1 40. CCDOA's Rule 30(b)(6) designee and Director of Aviation Randall
2 Walker testified as follows:

3 Q. Let's move on to subject No. 5 in Exhibit 1 [the
4 Rule 30(b)(6) deposition notice]. That's "The existence
5 of physical loss or damage to property at locations of
6 CCDOA's direct suppliers or customers on September
7 11th, 2001." Was there any physical loss or damage at
8 the locations of any of CCDOA's direct suppliers or
9 customers on September 11?

10 A. Certainly airlines are our customers; they had
11 significant damage.

12 Q. What was their damage?

13 A. I know some of them had offices in the World
14 Trade Center, for example?

15 Q. Who had offices in the World Trade Center?

16 A. I know that Delta did specifically.

17 Q. Anybody else?

18 A. Not that I recall. But I know that Delta did. Some
19 travel agencies I know were in the World Trade Center.
20 New York is a very popular market for Las Vegas in
21 terms of customers, and there were travel-related tour
22 wholesalers, travel agencies and those kinds of things that
23 had offices in the World Trade Center, yes.

24 Q. Any other customers or suppliers that were
25 damaged on September 11, 2001?

26 A. I don't specifically know every single one, no.

27 Q. Are you saying that the CCDOA airports were
28 closed because of the damage to the Delta office in the
World Trade Center and those travel agencies in the
World Trade Center?

 A. I think that the CCDOA was closed because of the
orders from the Federal Aviation Administration that shut
down the national air system.

**[Deposition of Randall H. Walker at p. 22:4-13,
attached as Exhibit "6" to Affidavit of Scott G.
Johnson.]**

1 41. During the morning of September 11, 2001, the FAA issued several
2 security directives to CCDOA.

3 **[Deposition of Rosemary Vassiliadis at pp. 13:13 -**
4 **14:19, attached as Exhibit "8" to Affidavit of Scott G.**
5 **Johnson.]**

6 42. CCDOA Deputy Director of Aviation Rosemary Vassiliadis testified
7 as follows:

8 Q. Are these security directives that you mentioned,
9 are they able to be shown to me, for example?

10 A. No, they're not. They are security-sensitive
information.

11 Q. Are you able to describe the contents of them?

12 A. Generally.

13 Q. Generally, what were airports supposed to do
14 because the national airspace was closed?

15 A. Airports needed to clear everybody out, and we had
16 to recertify and sterilize the airport. So in order to do
17 that, we had to, again, clear everyone out, which we did,
including vehicles. I mean, we had to tow vehicles out of
18 the garage to be on a perimeter. And they gave us each
and every point that we needed to do. And then go
through a sterilization and a recertification process.

19 **[Deposition of Rosemary Vassiliadis at pp. 14:20 -**
20 **15:10, attached as Exhibit "8" to Affidavit of Scott G.**
21 **Johnson.]**

22 43. CCDOA Deputy Director of Aviation Rosemary Vassiliadis testified
23 as follows:

24 Q. And then you had to sterilize the airport. What
does that mean?

25 A. That means we had to clear everybody out and
26 every unidentified object out.

**[Deposition of Rosemary Vassiliadis at p. 16:13-16,
attached as Exhibit "8" to Affidavit of Scott G.
Johnson.]**

44. CCDOA Deputy Director of Aviation Rosemary Vassiliadis testified
as follows:

Q. And then you also mentioned you had to be
recertified.

A. That's correct.

Q. What does certification mean?

A. The ability to operate, to be the public use facility
that we are.

Q. Is that an FAA certification?

A. That is correct.

Q. What was involved in the recertification?

A. We had to fulfill all the measures of our airport
security plan, which was also a security-sensitive
document, but it is certified and approved by the FAA.
Every airport has to submit that. In addition – in addition
to that, there were additional measures that we had to go
through that came through – that came to us by these
security directives.

**[Deposition of Rosemary Vassiliadis at p. 17:9-24,
attached as Exhibit "8" to Affidavit of Scott G.
Johnson.]**

45. CCDOA Deputy Director of Aviation Rosemary Vassiliadis testified
as follows:

Q. Do you remember any other security directives that
you can just describe generally for me that you received
on September 11, 2001?

A. All the security directives that we received were
measures to secure each property. You know, each
airport. And that was what was contained in them, the
measures that we had to take to assure the best that we
could that there wasn't an act of terrorism being planned

1 for that location. I can't really get into the specifics of how they
2 directed us and exactly what they directed us to do.

3 **[Deposition of Rosemary Vassiliadis at p. 19:1-11,**
4 **attached as Exhibit "8" to Affidavit of Scott G.**
5 **Johnson.]**

6 46. On or after September 11, 2001, the FAA issued a security directive
7 requiring airport operators to implement new security measures, including
8 establishment of a 300-foot perimeter for parked vehicles, suspension of curbside
9 check-ins, more frequent searches of carry-on baggage, increased presence of
10 uniformed and plainclothes security personnel, and allowing only passengers with
11 a flight ticket and identification past the security gates.

12 **[Deposition of Rosemary Vassiliadis at pp. 36:20 -**
13 **37:10, attached as Exhibit "8" to Affidavit of Scott G.**
14 **Johnson.]**

15 47. FAANational Operations Manager Benedict Sliney testified as follows:

16 Q. Did you have any understanding of the reason for
17 those security directives?

18 A. Yes.

19 Q. What were they?

20 A. My understanding is that we were going to permit
21 aircraft to fly in the national air space system, only those
22 aircraft that we deemed to be secure enough not to
23 become a guided missile or at least assure us as much as
24 possible that they would be safely able to be
25 accommodated.

26 Q. Is it fair to say that the security directives were
27 intended to reduce the likelihood of people getting
28 weapons on aircraft for example?

A. Absolutely.

Q. Reduce the likelihood of another terrorist attack
involving airplanes?

A. Absolutely.

Q. Is it true that airports would not be certified to

1 resume operations until they complied with the new FAA
2 security measures.

3 A. That's correct.

4 **[Deposition of Benedict Sliney at pp. 65:24 - 66:21,**
5 **attached as Exhibit "3" to Affidavit of Scott G.**
6 **Johnson.]**

7 48. On September 12, 2001, United States Secretary of Transportation
8 Norman Mineta issued a press release which included the following:

9 Secretary of Transportation Norman Y. Mineta has
10 announced the Federal Aviation Administration will
11 allow a limited reopening of the nation's commercial
12 airspace system in order to allow flights that were
13 diverted yesterday to continue to their original
14 destination.

15 The Secretary also announced that the FAA is temporarily
16 extending the ground stop order imposed yesterday while
17 additional security measures are being completed.

18 "Safety is always of paramount importance, and in these
19 extraordinary times we intend to be vigilant," Mineta
20 said. . . .

21 **[FAA Office of Public Affairs Press Release (Sept. 12,**
22 **2001), attached as Exhibit "9" to Affidavit of Scott G.**
23 **Johnson.]**

24 49. United States Department of Transportation Secretary Norman Mineta
25 ordered the national airspace reopened to commercial aviation at 11:00 a.m. EDT
26 on September 13, 2001.

27 **[Deposition of Benedict Sliney at pp. 66:22 - 67:16,**
28 **attached as Exhibit "3" to Affidavit of Scott G.**
Johnson; Deposition of Rosemary Vassiliadis at pp.
32:21 - 33:13, attached as Exhibit "8" to Johnson
Affidavit; United States Department of Transportation
Press Release (Sept. 13, 2001), attached as Exhibit
"10" to Johnson Affidavit.]

1 50. CCDOA's Rule 30(b)(6) designee and Director of Aviation Randall
2 Walker testified as follows:

3 Q. Let's move on to subject matter 2 in Exhibit 1 [the
4 Rule 30(b)(6) deposition notice]: "The manner by which
5 CCDOA claims that ingress to or egress from its airports
6 was prevented on September 11th through the 13th,
2001" Can you describe the manner in which CCDOA
claims that ingress to or egress from its airports was
prevented on September 11, 2001?

7 A. First off, all airplanes were prohibited by federal
8 order from flying, so no airplanes could arrive at our
airport or leave from our airport under federal order.

9 In addition to that, the terminal needed to be
10 vacated for security reasons, so the terminal was closed to
11 all nonbadged individuals, and the roadways into the
airport were blocked and – to allow the airport to be able
to have control of the airport in a sterile environment and
be able to do its security checks in accordance with the
FAA directives.

12 **[Deposition of Randall H. Walker at p. 18:6-24,**
13 **attached as Exhibit "6" to Affidavit of Scott G.**
14 **Johnson.]**

15 51. CCDOA's Rule 30(b)(6) designee and Director of Aviation Randall
16 Walker testified as follows:

17 Q. When do you claim that the prevention of ingress
18 and egress by aircraft began?

19 A. As soon as the FAA grounded all the aircraft.

20 * * *

21 Q. And when do you claim that the prevention of
ingress and egress by aircraft ended?

22 A. When the FAA authorized aircraft to begin
23 operations into McCarran once again.

24 **[Deposition of Randall H. Walker at p. 20:12-14; p.**
25 **20:19-22, attached as Exhibit "6" to Affidavit of Scott**
26 **G. Johnson.]**

27 52. CCDOA's Rule 30(b)(6) designee and Director of Aviation Randall
28 Walker testified as follows:

1 Q. What prevented a plane from taking off from any of
2 the CCDOA airports on September 11 after the order?

3 A. It was in violation of federal directives.

4 Q. There was nothing wrong with the runways at any
5 of the airports, right?

6 A. No, runways all functioned fine.

7 Q. But there was an order from the FAA that said
8 planes could not take off, right?

9 A. Planes were prohibited from being in the air space,
10 so therefore they couldn't take off or land.

11 **[Deposition of Randall H. Walker at p. 22:4-13,**
12 **attached as Exhibit "6" to Affidavit of Scott G.**
13 **Johnson.]**

14 53. FAA National Operations Manager Benedict Sliney testified as follows:

15 Q. Were you aware of any planes that took off after
16 the ground stop order?

17 A. I'm aware of one in particular.

18 Q. What was that?

19 A. It was a Fed Ex that a controller cleared for take off
20 out in Great Falls, Montana, despite the controller's
21 knowledge of the national ground stop order.

22 Q. What happened in that particular situation?

23 A. What happened in what respect sir?

24 Q. What happened to the plane for example?

25 A. I don't know.

26 Q. What happened with the controller?

27 A. He was subsequently fired and charged with a
28 federal misdemeanor, for which he was convicted.

Q. Between the ground stop order on September 11,
2001 and the reopening of the air space on September 13,
2001, there were some flights taking off and landing,
right?

A. There were flights that were granted exceptions,
yes – exceptions I should say.

1 Q. Some of those were flights taking supplies to New
2 York City and Washington, D.C., correct?

3 A. There were medical flights. There were medical
4 categories that we allowed after sufficient inquiry to do
5 that. Actually one of the interesting ones was I thought
6 the need for the Federal Reserve to transport checks to
7 various locations. That was one of the exceptions.

8 **[Deposition of Benedict Sliney at pp. 68:23 - 70:5,**
9 **attached as Exhibit "3" to Affidavit of Scott G.**
10 **Johnson.]**

11 54. Two or three planes flew into or out of McCarran International Airport
12 on September 12, 2001.

13 **[Deposition of Rosemary Vassiliadis at pp. 30:13 -**
14 **31:17; 36:2-19, attached as Exhibit "8" to Affidavit of**
15 **Scott G. Johnson).]**

16 55. By 8:00 a.m. PDT, McCarran International had been certified by the
17 FAA to be in compliance with all current security directives.

18 **[Deposition of Rosemary Vassiliadis at pp. 33:8 -**
19 **34:12, attached as Exhibit "8" to Affidavit of Scott G.**
20 **Johnson; CCDOA Press Release,**
21 **<http://cms.mccarran.com/dsweb/Get/Document-230>**
22 **18/09_01_Airport+Status+0913+afternoon.pdf (Sept.**
23 **13, 2001), attached as Exhibit "11" to Affidavit of**
24 **Scott G. Johnson).]**

25 **6. CCDOA Submits Claim to FM.**

26 56. On November 7, 2001, CCDOA notified FM of a claim for "Business
27 interruption loss due to terrorist attack in New York and Washington, DC."

28 **[Property Loss Notice (Nov. 7, 2001), attached as**
Exhibit "12" to Affidavit of Scott G. Johnson;

**Deposition of Lloyd Cutler at pp. 34:18 - 35:9,
attached as Exhibit "13" to Johnson Affidavit.]**

57. CCDOA claimed that there was coverage for its loss under the FM policy's Ingress/Egress Time Element Extension, Contingent Time Element Extension, and Protection and Preservation of Property provision.

[Letter from CCDOA's R. Ross Johnson to FM's Jeffrey Casillas (Feb. 22, 2002), attached as Exhibit "B" to CCDOA's Complaint; Deposition of R. Ross Johnson at pp. 24:23 - 25:19, attached as Exhibit "14" to Johnson Affidavit.]

58. On April 16, 2002, FM denied CCDOA's claim for the following reasons, among others:

- There was no coverage under the FM policy's Civil Authority coverage because the FAA orders grounding all aircraft did not directly result from physical damage at any CCDOA airport or within 1,000 feet of them as required by the policy;
- There was no coverage under the FM policy's Ingress/Egress Coverage Extension because ingress to or egress from CCDOA airports was not prevented as a direct result of physical damage of the type insured against as required by the policy;
- There was no coverage under the FM policy's Contingent Time Element coverage because there was no physical loss or damage at any direct supplier or customer location as required by the policy; and
- There was no coverage under the Protection and Preservation of Property – Time Element coverage because there was no immediately impending physical loss or damage at any CCDOA airport as required by the policy.

1 **[Letter from FM's Jeffrey C. Casillas to CCDOA's R.**
2 **Ross Johnson (Apr. 16, 2002), attached as Exhibit "D"**
3 **to CCDOA's Complaint.]**

4 **7. CCDOA Sues FM.**

5 59. On August 30, 2002, CCDOA sued FM for declaratory relief, breach
6 of contract, Unfair Claims Settlement Practices, and breach of the implied covenant
7 of good faith and fair dealing.

8 **[CCDOA Complaint, attached as Exhibit "1" to**
9 **Affidavit of Scott G. Johnson.]**

10
11 DATED: May 24, 2004

ROBINS, KAPLAN, MILLER & CIRESI L.L.P.

12
13 By: 

14 Scott G. Johnson
15 Attorneys for Defendant FACTORY MUTUAL
16 INSURANCE COMPANY
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Attorneys for Defendant FACTORY
MUTUAL INSURANCE COMPANY

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA**

COUNTY OF CLARK, a political
subdivision of the State of Nevada, on
behalf of Clark County Department of
Aviation,

Plaintiff,

vs.

FACTORY MUTUAL INSURANCE
COMPANY, a Rhode Island
Corporation, and DOES 1-10,

Defendant.

Case No: CV-S-02-1258-KJD-RJJ

**AFFIDAVIT OF SCOTT G. JOHNSON IN
SUPPORT OF FACTORY MUTUAL
INSURANCE COMPANY'S MOTION
FOR SUMMARY JUDGMENT**

[Notice of Motion and Motion for Summary
Judgment and Supporting Memorandum of
Points and Authorities; Statement of
Uncontroverted Facts; and Proposed Order
filed concurrently herewith]

I, Scott G. Johnson, being duly sworn, says:

1. I am an attorney admitted to practice law before the United States District Court
for the District of Nevada for this particular case and am a member in the law firm of
Robins, Kaplan, Miller & Ciresi L.L.P., attorneys of record for defendant FACTORY
MUTUAL INSURANCE COMPANY ("FM") in the above-referenced matter. I have

1 personal knowledge of the matters contained in this declaration and am competent to
2 testify thereto.

3 2. Attached hereto as Exhibit "1" is a true and correct copy of the Plaintiff's
4 Complaint, including exhibits, filed in this matter and served on FM.

5 3. Attached hereto as Exhibit "2" is a true and correct copy of The FAA
6 Responds, a document and public record prepared by the Federal Aviation
7 Administration and available at the following web address:
8 <http://www.faa.gov/Sept11portraits/chronology.cfm>.

9 4. Attached hereto as Exhibit "3" is a true and correct copy of the deposition
10 testimony and exhibits of Benedict Sliney, taken on April 22, 2004 in this matter.

11 5. Attached hereto as Exhibit "4" is a true and correct copy of the statement of
12 The Honorable Norman Y. Mineta, United States Secretary of Transportation, given
13 before the United States Senate Committee on Commerce, Science, and Transportation
14 on September 20, 2001. This statement can be found on the official website for the
15 United States Senate at the following location: [http://www.senate.gov/~commerce/](http://www.senate.gov/~commerce/hearings/092001Minetta.pdf)
16 [hearings/092001Minetta.pdf](http://www.senate.gov/~commerce/hearings/092001Minetta.pdf).

17 6. Attached hereto as Exhibit "5" is a true and correct copy of the Statement of
18 Jane F. Garvey, FAA Administrator, Before the House Subcommittee on Aviation,
19 Committee on Transportation and Infrastructure, on Aviation Security Following the
20 Terrorist Attack on September 11th made on September 21, 2001. This statement can
21 be found on the United States House of Representatives website at the following
22 location: <http://www.house.gov.transportation/aviation/09-21-01/garvey.html>.

23 7. Attached hereto as Exhibit "6" are true and correct copies of selected pages
24 of the deposition testimony of Randall H. Walker, taken on April 13, 2004 in this matter.

25 8. Attached hereto as Exhibit "7" is a true and correct copy of the Federal Rule
26 30(b)(6) Deposition Notice directed to CCDOA. CCDOA designated Randall H. Walker
27 to testify on its behalf in response to the Deposition Notice.
28

1 9. Attached hereto as Exhibit "8" are true and correct copies of selected pages
2 of the deposition testimony of Rosemary Vassiliadis, taken on April 15, 2004 in this
3 matter.

4 10. Attached hereto as Exhibit "9" is a true and correct copy of a September 12,
5 2001 press release issued by the FAA Office of Public Affairs. This press release can
6 be found on the FAA's official website at the following location:
7 <http://www.faa.gov/apa/pr/pr.cfm?id=1406>.

8 11. Attached hereto as Exhibit "10" is a true and correct copy of a September 13,
9 2001 press release issued by the United States Department of Transportation. This press
10 release can be found on the Department of Transportation's official website at the
11 following location: <http://www.dot.gov/affairs/dot9601.htm>.

12 12. Attached hereto as Exhibit "11" is a true and correct copy of a CCDOA News
13 Release dated September 13, 2001. This news release can be found in McCarran
14 International Airport's official website at the following location:
15 [http://cms.mccarran.com/dsweb/Get/Document-23018/09_01_Airport+Status+0913+](http://cms.mccarran.com/dsweb/Get/Document-23018/09_01_Airport+Status+0913+afternoon.pdf)
16 [afternoon.pdf](http://cms.mccarran.com/dsweb/Get/Document-23018/09_01_Airport+Status+0913+afternoon.pdf).

17 12. Attached hereto as Exhibit "12" is a true and correct copy of the Acord
18 Property Loss Notice dated November 7, 2001 and sent by CCDOA to FM. This
19 document was prepared by CCDOA's insurance broker Lloyd Cutler at CCDOA's
20 direction, as he testified to in his deposition at pages 34 and 35. Attached hereto as
21 Exhibit "13" are true and correct copies of selected pages of the deposition testimony of
22 Lloyd Cutler, taken on April 13, 2004 in this matter.

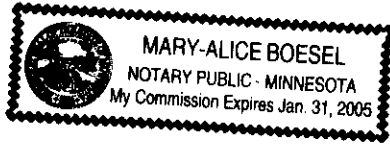
23 13. Attached as Exhibit "14" are true and correct copies of selected pages of the
24 deposition testimony of R. Ross Johnson, taken on April 14, 2004 in this matter.

25 FURTHER YOUR AFFIANT SAITH NOT.

26 
27 _____
28 Scott G. Johnson

1 SUBSCRIBED and SWORN to before me
2 this 24th day of May 2004.

3 Mary Alice Boesel
4 Notary Public in and for said County and State



COMP
STEWART L. BELL
 District Attorney
CIVIL DIVISION
 State Bar No. 000477
 By: **E. LEE THOMSON**
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2:30 pm
 FILED

AUG 30 11 04 AM '07

CLERK

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Attorneys for **Plaintiff, County of Clark,**
a political subdivision of the State of Nevada, on behalf of
Clark County Department of Aviation

DISTRICT COURT
 CLARK COUNTY, NEVADA

COUNTY OF CLARK, a political
 subdivision of the State of Nevada, on
 behalf of Clark County Department of
 Aviation,

Plaintiff,

vs.

FACTORY MUTUAL INSURANCE
 COMPANY, a Rhode Island
 Corporation, and DOES 1-10,

Defendant.

Case No: **A 455706**

Dept No: **III**

COMPLAINT FOR:

- 1. DECLARATORY RELIEF;**
- 2. BREACH OF CONTRACT;**
- 3. UNFAIR CLAIM SETTLEMENT**
- PRACTICES (NRS § 686A.310 *et seq.*); and**
- 4. TORTIOUS BREACH OF THE**
- IMPLIED COVENANT OF GOOD FAITH**
- AND FAIR DEALING**

[DEMAND FOR JURY TRIAL]
ARBITRATION EXEMPTION

CLAIMED: Declaratory Relief
Amount Exceeds \$40,000.00

¹ Mr. Steuber and Mr. Mastertson have been retained by the Plaintiff but will not make an appearance in this case until the Court grants the Motion to Associate, which is being filed with the Court.

1 Plaintiff COUNTY OF CLARK, a political subdivision of the State of Nevada, on
2 behalf of Clark County Department of Aviation ("CCDOA") complains of Defendants
3 FACTORY MUTUAL INSURANCE COMPANY ("FM") and DOES 1 through 10, and
4 alleges:

5 **INTRODUCTION AND NATURE OF DISPUTE**

6 1. CCDOA brings this action against the Defendant insurance company, FM, for
7 insurance coverage under an "FM Global" all risk policy for substantial financial loss
8 sustained by CCDOA as a result of the tragic events of September 11, 2001.

9 2. On the morning of September 11, 2001, the United States of America suffered
10 the worst peacetime disaster in its history – or perhaps in all of history. As all Americans
11 painfully know, terrorist-backed assaults on the World Trade Center and the Pentagon
12 caused great physical devastation and property damage and, worse, the loss of thousands of
13 innocent lives. The horrible events of 9/11 threw America – and especially America's air
14 traffic and airport facilities - into terrible turmoil. Air traffic nation-wide was grounded by
15 directive of the Federal Aviation Administration as a result of the tragic events and physical
16 devastation to the World Trade Center and the Pentagon. Airports throughout America were
17 shut down, not to reopen for days thereafter and not to return to their pre-9/11 levels of
18 activity for many weeks and months later. The airports of Clark County were no exception.
19 Those airports, notably McCarran International Airport, were shut down immediately after,
20 and as direct result of, the destruction of 9/11. Access to and from the Clark County airport
21 facilities was prohibited.

22 3. As a result of the airport closures, CCDOA suffered a substantial loss to its
23 business – just the type of loss covered by the policy of insurance sold to CCDOA by FM for
24 substantial premiums. But when CCDOA advised FM of its intent to submit a claim under
25 the FM Global policy for its loss, FM did not acknowledge its policy obligations. Instead,
26 FM's unequivocal and arrogant response was that if CCDOA submitted such a claim, FM
27 would reject the claim and cancel its policy. Thereafter, when CCDOA did, in fact, submit
28 its claim for loss under the policy, refusing to bend to the threats and pressure exerted by

1 FM, FM categorically denied the claim, refused to honor or acknowledge its policy
2 obligations, and promptly cancelled the three-year policy it had sold to CCDOA after less
3 than two years had elapsed.

4 4. Because of FM's wrongful, tortious conduct, CCDOA brings this complaint
5 seeking a declaration from this Court as to the rights, duties, and responsibilities of the
6 parties under the FM Global policy, and damages, including punitive damages, for FM's
7 breach of contract, unfair claim settlement practices, and tortious breach of the implied
8 covenant of good faith and fair dealing.

9 **THE PARTIES**

10 5. Plaintiff COUNTY OF CLARK is a political subdivision of the State of
11 Nevada, and brings this action on behalf of the Clark County Department of Aviation, which
12 operates McCarran International Airport, North Las Vegas Airport, Henderson Executive
13 Airport, Jean Sport Aviation Center, Overton-Perkins Field and Searchlight Airfield
14 (collectively, the "Clark County Airports") as part of the Clark County Airport System
15 which is publicly owned by Clark County, Nevada. Plaintiff is hereafter referred to as
16 "CCDOA".

17 6. Defendant FACTORY MUTUAL INSURANCE COMPANY is a Rhode
18 Island corporation, with its principal place of business in Johnston, Rhode Island, licensed to
19 transact business, and transacting business, in the State of Nevada and the County of Clark.

20 7. Plaintiff CCDOA is ignorant of the true names and capacities, whether
21 individual, associate, partnership, corporate or otherwise, of defendants fictitiously
22 designated herein as DOES 1 through 10, and, therefore, sues those defendants by such
23 fictitious names. Plaintiff will seek leave of Court to amend this Complaint when the true
24 names and capacities of such fictitiously named defendants have been ascertained. Plaintiff
25 is informed and believes and on that basis alleges that DOES 1 through 10, in some way
26 unknown to Plaintiff, have underwritten, provided or issued insurance coverage to Plaintiff
27 for the losses alleged herein or are otherwise responsible for Plaintiff's damages alleged
28 herein, and that DOES 1 through 10 are authorized to, and do, transact business in the State

1 of Nevada and the County of Clark.

2 8. Plaintiff is informed and believes and thereon alleges that, at all material times
3 herein alleged, the defendants, and each of them, were the agents, servants and employees of
4 the other defendants, and each of them.

5 **THE INSURANCE POLICY**

6 9. FM sold FM Global policy number UA864 (the "Policy") to CCDOA for the
7 period October 1, 2000 to October 1, 2003. A true and correct copy of the Policy is attached
8 hereto as Exhibit "A" to this Complaint and incorporated herein by reference as though fully
9 set forth at length. CCDOA paid a substantial premium for the Policy, which provided broad
10 coverage protection to CCDOA and other Named Insureds, all according to the Policy's
11 terms.

12 10. Under the Policy, CCDOA is the Named Insured, as is any subsidiary,
13 associated or allied company, corporation, firm, organization, and CCDOA's interest in any
14 partnership or joint venture in which CCDOA has management control or ownership.

15 11. By its express terms, the type of property insured under the Policy includes
16 real property, including buildings, and personal property including improvements and
17 betterments.

18 12. In addition to providing insurance protection against and coverage for physical
19 loss or damage to CCDOA's real and personal property, the Policy also includes a number of
20 broad, important coverage extensions providing at least \$25 million of insurance against
21 economic losses suffered while CCDOA's business is interrupted or diminished regardless
22 of whether any physical loss or damage to CCDOA's own property occurs. As set forth in
23 the following paragraphs, these "business interruption" or "time element" coverage
24 extensions include the Contingent Time Element Extension, the Extended Period of
25 Liability, the Ingress/Egress Time Element Extension, and the Preservation of Property
26 coverage provision.

27 13. Section 3.A. of the Policy contains the following Contingent Time Element
28 Coverage Extension:

A. CONTINGENT TIME ELEMENT

This Policy covers the Actual Loss Sustained and EXTRA EXPENSE incurred by the Insured during the PERIOD OF LIABILITY:

- 1) directly resulting from physical loss or damage of the type insured and
- 2) to property of the type insured, at any locations of direct suppliers or customers located within the TERRITORY of this Policy. The term "supplier or customer" does not include any company supplying to or receiving from the Insured Location, as described elsewhere in this Policy, electricity, fuel, gas, water, steam, refrigeration, sewage or telecommunications.

14. The term "EXTRA EXPENSE" is defined in Section 2.B.1) of the Policy to include "Extra expenses to temporarily continue as nearly as normal as practicable the conduct of the Insured's business."

15. In Section 3.B. of the Policy, the period over which economic loss is recoverable is extended until business income is restored to pre-interruption levels:

B. EXTENDED PERIOD OF LIABILITY

The GROSS EARNINGS coverage is extended to cover the reduction in sales resulting from:

- 1) the interruption of business as covered by GROSS EARNINGS;
- 2) for such additional length of time as would be required with the exercise of due diligence and dispatch to restore the Insured's business to the condition that would have existed had no loss occurred; and
- 3) commencing with the date on which the liability of the Company for loss resulting from interruption of business would terminate if this Extension had not been included herein. . . .

1 16. Section 3.C. of the Policy contains the following Ingress/Egress Time Element
2 Coverage Extension:

3 **C. INGRESS/EGRESS**

4 This Policy covers the Actual Loss Sustained and EXTRA
5 EXPENSE incurred by the Insured due to the necessary
6 interruption of the Insured's business due to prevention of
7 ingress to or egress from an Insured Location, whether or not
8 the premises or property of the Insured is damaged, provided
9 that such prevention is a direct result of physical damage of
the type insured by this Policy to the kind of property not
excluded by this Policy.

10 17. Section 3.E. of the Policy provides coverage against loss sustained due to
11 actions taken to protect or preserve property against threatened damage:

12 **D. PROTECTION AND PRESERVATION OF**
13 **PROPERTY – TIME ELEMENT**

14 This Policy Covers Actual Loss Sustained by the Insured for a
15 period of time not to exceed 48 hours prior to and 48 hours
16 after the Insured first taking reasonable action for the
17 temporary protection and preservation of property insured by
18 this Policy provided such action is necessary to prevent
immediately impending physical loss or damage insured by
this Policy at such insured property. . . .

19 18. To the extent not waived or otherwise excused, CCDOA has complied with all
20 terms and conditions precedent, including payment of undisputed premiums and notice,
21 contained in the Policy and is entitled to all benefits of insurance provided by the Policy.

22 **FACTUAL BACKGROUND**

23 19. On September 11, 2001, the United States of America experienced a
24 devastating, coordinated terrorist attack in which commercial aircraft were hijacked and
25 diverted to destroy highly visible and populated American landmarks. Thousands of
26 innocent lives were lost. Billions of dollars of real and personal property, including without
27 limitation, buildings, improvements, and betterments, were damaged and destroyed.

28 20. At 8:48 a.m., American Airlines Flight 11 crashed into the north tower of the

1 World Trade Center.

2 21. At 9:05 a.m., United Airlines Flight 175 crashed into the south tower of the
3 World Trade Center.

4 22. As a direct result of the physical damage to the World Trade Center towers
5 caused by the coordinated terrorist attack, all air traffic within the United States was
6 grounded and all United States airports, including the Clark County Airports, were
7 immediately shut down. Specifically, at 9:40 a.m., the Federal Aviation Administration
8 ("FAA") closed all airports by issuing the following Notice to Airmen ("NOTAM"):

9 IFDC 1/9731 FDC SPECIAL NOTICE – DUE TO EXTRAORDINARY
10 CIRCUMSTANCES AND FOR REASONS OF SAFETY. ATTENTION
11 ALL AIRCRAFT OPERATORS, BY ORDER OF THE FEDERAL
12 AVIATION COMMAND CENTER, ALL AIRPORTS/AIRDROMES
13 ARE NOT AUTHORIZED FOR LANDING AND TAKEOFF. ALL
14 TRAFFIC INCLUDING AIRBORNE AIRCRAFT ARE ENCOURAGED
15 TO LAND SHORTLY.

16 23. At 9:43 a.m., American Airlines Flight 77 crashed into the Pentagon.

17 24. At 9:59 a.m., the south tower of the World Trade Center collapsed.

18 25. At 10:00 a.m., United Airlines Flight 93 crashed just north of Somerset County
19 Airport outside of Pittsburgh, Pennsylvania, apparently en route to Camp David.

20 26. At 10:28 a.m., the north tower of the World Trade Center collapsed.

21 27. All airports, including the Clark County Airports, remained closed through at
22 least September 13, 2001 and access to and from the airports was prohibited.

23 CCDOA'S COVERED LOSS

24 28. As a direct result of the September 11, 2001 terrorist inflicted physical damage
25 to the World Trade Center and Pentagon, CCDOA sustained Actual Loss covered by the
26 Policy due to the necessary interruption of CCDOA's business due to the prevention of
27 ingress to or egress from each of the Clark County Airports.

28 29. CCDOA also incurred covered EXTRA EXPENSE, including the expense
incurred to resume and continue operations at the Clark County Airports as nearly normal as
practicable following the devastation of September 11th.

1 30. The tragic events of September 11th also caused CCDOA to sustain covered
2 Actual Loss and incur covered EXTRA EXPENSE as a direct result of damage to property
3 of the type insured by the Policy at locations of direct suppliers or customers of the Clark
4 County Airports, including without limitation American Airlines and United Airlines.

5 31. CCDOA's covered Actual Loss and EXTRA EXPENSE continued well
6 beyond the resumption of business at the Clark County Airports for an additional length of
7 time required to restore CCDOA's business to the condition that would have existed had no
8 loss occurred.

9 32. CCDOA also sustained covered Actual Loss due to reasonable and necessary
10 actions taken to prevent immediately impending covered physical loss or damage threatened
11 or reasonably believed to be threatened by additional terrorist attacks to CCDOA's property
12 on and following September 11th.

13 33. CCDOA's Loss sustained exceeds \$5,933,244. CCDOA's EXTRA EXPENSE
14 incurred exceeds \$597,326. Thus, CCDOA's total Loss insured under the Policy exceeds
15 \$6.5 million. CCDOA will seek leave to amend this Complaint when the precise amount of
16 its Loss is determined. The Policy covers CCDOA's Loss.

17 **FM's HEAVY-HANDED, BAD FAITH RESPONSE TO CCDOA'S LOSS**

18 34. Prior to submitting a claim for its September 11th related Loss, CCDOA
19 notified FM of that Loss and met with FM to discuss the coverage available under the
20 Policy. During that meeting, FM not only expressed to CCDOA a categorical, no
21 compromise, "no coverage" position without conducting any investigation of the particulars
22 of CCDOA's Loss, but also sought to coerce CCDOA into abandoning its claim *ab initio*.

23 35. Specifically, FM expressly threatened to cancel the three-year Policy two years
24 into its term if CCDOA ever even submitted a claim for any loss arising out of or resulting
25 from the tragic events of September 11th. FM leveled its threat with full knowledge that the
26 events of September 11th had created a difficult "tight" insurance market and that CCDOA
27 would be severely prejudiced if the Policy were prematurely cancelled in mid-term and
28 CCDOA were forced to attempt to replace the coverage provided by the Policy. FM

1 likewise made its threat despite the fact it knew that CCDOA had been a model policyholder
2 with FM, paying substantial premium dollars to FM over the years and working closely and
3 well with FM to keep claims and risks at a minimum.

4 36. Despite FM's abusive, coercive, and bad faith threat, CCDOA did submit a
5 timely claim for its Loss and requested that FM honor its duty to pay CCDOA for that Loss.
6 On February 22, 2002, CCDOA wrote to FM providing a detailed explanation of applicable
7 coverage provided under the Policy, among other things, explaining why CCDOA in good
8 faith believed that the claim was covered and asking FM to give serious consideration to
9 CCDOA's claim. A true and correct copy of this CCDOA's February 22, 2002 letter is
10 attached hereto as Exhibit "B." On March 22, 2002 CCDOA submitted a Sworn Statement
11 in Proof of Loss Associated With September 11, 2001 Terrorist Attacks. A true and correct
12 copy of CCDOA's Proof of Loss is attached hereto as Exhibit "C."

13 37. Instead of honoring its coverage obligations, FM disclaimed any responsibility
14 to reimburse CCDOA for its Loss or any portion of it. Specifically, by letter dated April 16,
15 2002, FM relied on blatantly inaccurate and tortured readings of policy language and
16 inaccurate factual recitations to deny any obligation under the Policy. A true and correct
17 copy of FM's April 16, 2002 letter is attached hereto as Exhibit "D."

18 38. By letter dated April 30, 2002, CCDOA explained why FM's denial of
19 coverage was wrong and asked FM to reconsider. A true and correct copy of CCDOA's
20 April 30, 2002 letter is attached hereto as Exhibit "E."

21 39. Despite CCDOA's April 30, 2002 letter, FM persisted in its refusal to honor its
22 obligations under the Policy. By letter dated May 28, 2002, FM relied on further distortion
23 and augmentation of the actual language of the Policy to restate its unsupportable denial of
24 coverage. A true and correct copy of FM's May 28, 2002 letter is attached hereto as Exhibit
25 "F."

26 40. In retaliation for CCDOA's decision to submit a claim for the insurance
27 benefits due under and covered by the Policy, FM cancelled the Policy which, by its terms,
28 was originally underwritten for the three-year period from October 1, 2000 to October 1,

1 2003. By letter dated June 25, 2002, FM stated that coverage would terminate effective
2 October 1, 2002. In a thinly-veiled allusion to CCDOA's refusal to forgo insurance proceeds
3 for its September 11th related Loss, FM cited only a supposed "fundamental divergence
4 between our companies on issues relating to the provision and purpose of first-party property
5 insurance as well as the application of material policy provisions." FM acknowledged that it
6 had not stated the facts on which its cancellation decision was based, but referred CCDOA to
7 its rights under Nevada law and promised to provide those facts within six days of receipt of
8 a written request. A true and correct copy of FM's June 25, 2002 letter is attached hereto as
9 Exhibit "G."

10 41. By letter dated July 2, 2002, CCDOA made a written request for information
11 relating to the facts on which FM's decision to terminate coverage was based. A true and
12 correct copy of CCDOA's July 2, 2002 letter is attached hereto as Exhibit "H."

13 42. Despite CCDOA's request, FM again failed to state the facts on which its
14 decision to cancel the Policy was based and, instead, through a letter dated July 11, 2002,
15 made only the conclusory statement that "In our judgment it is unlikely that any future
16 insurance relationship with [CCDOA] could be mutually satisfactory." A true and correct
17 copy of FM's July 11, 2002 letter is attached hereto as Exhibit "I."

18 **FIRST CAUSE OF ACTION**

19 **[Declaratory Relief]**

20 43. CCDOA re-alleges and incorporates by reference paragraphs 1 through 42
21 above as though set forth fully herein.

22 44. CCDOA therefore seeks a judicial declaration as to the duties and obligations
23 of FM to reimburse CCDOA under the Policy, confirming CCDOA's contentions, as set
24 forth above, are correct, including without limitation that is Loss is covered under the Policy.
25 A declaration is appropriate at this time in order that the parties' dispute may be resolved and
26 the parties may be aware of their respective rights and obligations.

27 ///

28 ///

SECOND CAUSE OF ACTION

[Breach of Contract]

45. CCDOA re-alleges and incorporates by reference paragraphs 1 through 44 above as though set forth fully herein.

46. FM has breached its insurance Policy with CCDOA by refusing to reimburse CCDOA for its losses insured under the Policy.

47. As a direct and proximate result of the acts of FM, CCDOA has been injured in the amount of at least \$6.5 million, which has not yet been precisely ascertained, plus interest. When the precise amount of damages is known, CCDOA will seek leave to amend this Complaint.

THIRD CAUSE OF ACTION

[Unfair Claim Settlement Practices]

48. CCDOA re-alleges and incorporates by reference paragraphs 1 through 47 above as though set forth fully herein.

49. Through the conduct described above, FM has engaged in Unfair Claim Settlement practices prohibited by NRS §686A.310, including but not limited to: (a) misrepresenting pertinent facts or insurance policy provisions relating to coverage at issue; (b) failing to adopt and implement reasonable standards for the prompt investigation and processing of claims; (c) failing to effectuate prompt, fair and equitable settlement of claims in which FM's liability has become clear; (d) compelling CCDOA to instigate the instant litigation to recover amounts due under the Policy; (e) attempting to compel and coerce CCDOA to abandon its claim by threatening to cancel the Policy; (f) failing to comply with the provisions of NRS 687B.310 to 687B.390 or 678B.410; and (g) failing to provide a reasonable explanation of the basis for denial of CCDOA's claim.

50. As a direct and proximate result of the acts of FM, CCDOA has been injured in the amount of at least \$6.5 million, which has not yet been precisely ascertained, plus interest. When the precise amount of damages is known, CCDOA will seek leave to amend this Complaint.

51. FM's unreasonable conduct described above was and is despicable and was done to vex and injure CCDOA with a willful conscious disregard for CCDOA's rights, constituting oppression, fraud and/or malice. FM ignored CCDOA's interests and concerns, consciously placed its own economic interests first, with the intent to injure CCDOA. CCDOA therefore is entitled to recover all attorney's fees it reasonably has incurred in its efforts to obtain Policy benefits that wrongfully were withheld in bad faith by FM and to recover punitive damages from FM in an amount sufficient to punish FM and to make an example of FM in order to deter similar conduct in the future.

FOURTH CAUSE OF ACTION

[Tortious Breach of the Implied Covenant of Good Faith and Fair Dealing]

52. CCDOA re-alleges and incorporates by reference paragraphs 1 through 51 above as though set forth fully herein.

53. Implied in the Policy is a covenant that FM would act in good faith and deal fairly with CCDOA, that FM would do nothing to interfere with the rights of CCDOA to receive the benefits of the Policy, and that FM would give the same level of consideration to the interests of CCDOA as FM gives to its own interests.

54. In breach of this covenant, FM did the things and committed the acts alleged above for the purpose of consciously and unreasonably withholding from CCDOA the rights and benefits to which CCDOA was entitled under the Policy without any legitimate basis for doing so and without considering the interests of CCDOA to the same extent as FM considered its own interests.

55. The acts of FM are inconsistent with the reasonable expectations of their insured, are contrary to established practices and legal requirements, and constitute bad faith.

56. Accordingly, CCDOA is entitled to recover all attorney's fees that it reasonably has incurred in its efforts to obtain Policy benefits that wrongfully were withheld in bad faith by FM.

57. FM's unreasonable conduct described above was and is despicable and was done to vex and injure CCDOA with a willful conscious disregard for CCDOA's rights,

1 constituting oppression, fraud and/or malice. FM ignored CCDOA's interests and concerns,
2 consciously placed its own economic interests first, with the intent to injure CCDOA.
3 CCDOA therefore is entitled to recover punitive damages from FM in an amount sufficient
4 to punish FM and to make an example of FM in order to deter similar conduct in the future.

5 WHEREFORE, Plaintiff CCDOA prays for judgment as follows:

6 **ON THE FIRST CAUSE OF ACTION**

7 1. For a declaration that CCDOA's contentions as set forth above are correct,
8 including without limitation that its Loss is covered under the Policy;

9 **ON THE SECOND CAUSE OF ACTION**

10 2. For damages according to proof at the time of trial, but no less than \$6.5
11 million, plus interest;

12 **ON THE THIRD CAUSE OF ACTION**

13 3. For damages according to proof at the time of trial, but no less than \$6.5
14 million, plus interest;

15 4. For its reasonable attorney's fees incurred in its efforts to obtain the benefits
16 due under the Policy;

17 5. For punitive damages in an amount sufficient to punish FM and to make an
18 example of FM in order to deter similar conduct in the future;

19 **ON THE FOURTH CAUSE OF ACTION**

20 6. For damages according to proof at the time of trial, but no less than \$6.5
21 million, plus interest;

22 7. For its reasonable attorney's fees incurred in its efforts to obtain the benefits
23 due under the Policy;

24 8. For punitive damages in an amount sufficient to punish FM and to make an

25 ///

26 ///

27 ///

28 ///

1 example of FM in order to deter similar conduct in the future;

2 **ON ALL CAUSES OF ACTION**

3 9. For its costs of suit incurred herein; and

4 10. For such other and further relief as may be deemed just and proper.

5 DATED this 30th day of August 2002.

6 STEWART L. BELL
7 DISTRICT ATTORNEY
8 State Bar No. 000477

9 By: 

10 E. LEE THOMSON
11 Chief Deputy District Attorney
12 State Bar No. 001057
13 500 So. Grand Central Parkway, 5th Floor
14 P. O. Box 552215
15 Las Vegas, Nevada 89155-2215
16 Attorney for **Plaintiff**
17 **County of Clark, a political subdivision**
18 **of the State of Nevada, on behalf of**
19 **Clark County Department of Aviation**
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DECLARATIONS - SECTION A

1. NAMED INSURED AND MAILING ADDRESS

Clark County Department of Aviation and any subsidiary, associated or allied company, corporation, firm, organization, and Clark County Department of Aviation's interest in any partnership or joint venture in which Clark County Department of Aviation has management control or ownership as now constituted or hereafter is acquired, as the respective interest of each may appear; all hereafter referred to as the "Insured", including legal representatives.

5757 Wayne Newton Blvd.
Las Vegas, NV 89119

2. POLICY DATES

FROM: 01 October, 2000
TO: 01 October, 2003
TERM: 03 years, 00 months, 00 days

As respects any property located in Canada, the term of coverage under this Policy will not exceed 12 months. However, coverage for such locations will be automatically renewed for subsequent periods of one year unless cancelled under the terms of this Policy or limited by the expiration date on the Declarations Page of this Policy.

3. TERRITORY

This Policy covers Insured Locations in:

- A. Canada.
- B. The United States of America.
- C. The Commonwealth of Puerto Rico.

4. INSURED LOCATION

- A. The coverages under this Policy apply to an Insured Location unless otherwise provided.

Insured Location is a location:

- 1) listed on a Schedule of Locations attached to this Policy.
- 2) covered as a Miscellaneous Unnamed Location.
- 3) covered under the terms and conditions of the Automatic Coverage or Errors and Omissions provisions.

B. References and Application. The following term(s) wherever used in this Policy means:

1) Location:

- a) as specified in the schedule of locations, except for Miscellaneous Unnamed Locations; or
- b) if not so specified or if a Miscellaneous Unnamed Location, a building, yard, dock, wharf, pier or bulkhead (or any group of the foregoing) bounded on all sides by public streets, clear land space or open waterways, each not less than fifty feet wide. Any bridge or tunnel crossing such street, space or waterway will render such separation inoperative for the purpose of this References and Application.

5. CURRENCY

All amounts, including deductibles and limits of liability, indicated in this Policy are in the currency of the United States of America, except for Insured Locations in Canada where such amounts will be in Canadian currency. Losses will be adjusted and paid as provided in the CURRENCY FOR LOSS PAYMENT clause of the LOSS ADJUSTMENT AND SETTLEMENT section.

Premium for this Policy is in the currency of the United States of America except for the premium applying for Insured Locations in Canada where such amounts will be in Canadian currency.

6. LIMITS OF LIABILITY

The Company's maximum limit of liability in a single occurrence regardless of the number of Locations or coverages involved will not exceed the Policy limit of liability of \$1,567,393,000, except as follows. When a limit of liability for a Location or other specified property is shown, such limit will be the maximum amount payable for any loss or damage arising from physical loss or damage at such Location or involving such other specified property.

Miscellaneous Unnamed Locations: \$25,000,000 per Location

If a lesser limit of liability is stated below or elsewhere in this Policy, the lesser limit will apply. The limits of liability stated below or elsewhere in this Policy are part of and not in addition to the Policy limit of liability.

Limits of liability stated below apply in the aggregate per occurrence for all Locations and coverages involved.

When a limit of liability is shown as applying in the Aggregate During Any Policy Year, the Company's maximum limit of liability will not exceed such limit during any policy year regardless of the number of locations and coverages involved.

In the event an occurrence results in liability payable under more than one policy issued to the Named Insured by the Company, or its representative companies, the maximum amount payable in the aggregate under all such policies will be the applicable limit(s) of liability indicated in this Policy regardless of the number of coverages, locations or perils involved.

Limits of Liability

\$25,000,000 applies to each of the following:

COMMISSIONS, PROFITS AND ROYALTIES;
CONTINGENT TIME ELEMENT;
DEFERRED PAYMENTS;
ERRORS AND OMISSIONS;
SERVICE INTERRUPTION PROPERTY DAMAGE and
SERVICE INTERRUPTION TIME ELEMENT combined as
respects all specified services interrupted;
EXPEDITING COSTS and EXTRA EXPENSE combined

\$25,000,000: TRANSPORTATION, but not to exceed a \$10,000,000 limit for
TIME ELEMENT

\$50,000: LAND AND WATER CONTAMINANT OR POLLUTANT
CLEANUP, REMOVAL AND DISPOSAL in the Aggregate
During Any Policy Year

\$100,000,000: EARTH MOVEMENT in the Aggregate During Any Policy Year

\$100,000,000: FLOOD in the Aggregate During Any Policy Year

Time Limits

In addition to the time limits shown elsewhere in this Policy, the following apply:

90 day period: AUTOMATIC COVERAGE

30 day period: INGRESS/EGRESS

60 day period: EXTENDED PERIOD OF LIABILITY

7. PREMIUM

This Policy is issued in consideration of an initial premium. If the term of this Policy is longer than one year, for each subsequent year of coverage, premium will be due at the anniversary and will be subject to rules and rates in effect at that time.

8. PREMIUM PAYABLE

Kellogg-Cutler Associates, Inc. pays the premium under this Policy, and any return of the paid premium accruing under this Policy will be paid to the account of Kellogg-Cutler Associates, Inc.

9. VALUE REPORTING PROVISIONS

The Insured will provide the Company 100% values by location as of the inception date of this Policy and annually thereafter, unless otherwise shown.

These statement(s) of values are due no later than sixty (60) days from the due date(s) shown below.

<u>Values as Of</u>	<u>Due Date</u>	<u>Type of Values</u>
01 October	01 October	Property values in accordance with the VALUATION clause of the LOSS ADJUSTMENT AND SETTLEMENT section.
01 October	01 October	In addition, Stock and Supplies on the average and maximum values based on the previous 12 month period.
01 October	01 October	Time Element values anticipated for the 12 months following the "Value as Of" date, and the actual Time Element values for the previous 12 month period.

10. WAITING PERIOD

For the purposes of applying SERVICE INTERRUPTION Coverage, the Waiting Period is 12 hours.

11. DEDUCTIBLES

In each case of loss covered by this Policy, the Company will be liable only if the Insured sustains a loss in a single occurrence greater than the applicable deductible specified below, and only for its share of that greater amount.

Unless otherwise stated below:

- A. When this Policy insures more than one location, the deductible will apply against the total loss covered by this Policy in any one occurrence.
- B. If two or more deductibles provided in this Policy apply to a single occurrence, the total to be deducted will not exceed the largest deductible applicable, unless otherwise provided.

Policy Deductible(s)

\$10,000 combined all coverages, except as follows.

Exceptions to Policy Deductible(s)

Earth Movement

\$100,000 combined all coverages

Fine Arts

\$1,000 combined all coverages

Flood

\$100,000 combined all coverages

Boiler and Machinery

\$10,000 Property Damage

24 Hours Equivalent Time Element

References and Application. The following term(s) means:

1) Boiler and Machinery:

A. Physical loss or damage both originating within:

1. Boilers, fired or unfired pressure vessels, vacuum vessels, and pressure piping, all normally subject to vacuum or internal pressure other than static pressure of contents, excluding:

- (a) waste disposal piping;
- (b) any piping forming part of a fire protective system;
- (c) furnaces; and
- (d) any water piping other than:

- (1) boiler feed water piping between the feed pump or injector and the boiler;
- (2) boiler condensate return piping; or
- (3) water piping forming part of a refrigerating or air conditioning system used for cooling, humidifying or space heating purposes

2. All mechanical, electrical, electronic or fiber optic equipment; and

B. Caused by, resulting from, or consisting of:

1. Mechanical breakdown; or
2. Electrical or electronic breakdown, or
3. Extremes or changes of temperature; or
4. Rupture, bursting, bulging, implosion, or steam explosion.

Boiler and Machinery as used in this Policy will not mean:

A. Physical loss or damage caused by or resulting from any of the following regardless of any other cause or event contributing concurrently or in any other sequence to the loss:

1. Combustion explosions, except from within combustion gas turbines; or
2. Explosions from liquids coming in contact with molten materials; or
3. Accidental discharge, escape, leakage, back-up, or overflow to the open of any material from confinement within piping, plumbing systems, or tanks except from property described in item 1 above; or
4. Fire, or from the use of water or other means to extinguish a fire.

2) Hours Equivalent:

The 100% hourly Time Element value at the location where the physical damage occurs. The term "location where the physical damage occurs" means the entire premises identified as an Insured Location. In determining the 100% hourly Time Element value, due consideration shall be given to the experience of the business before the loss and the probable experience thereafter.

PROPERTY DAMAGE - SECTION B

1. PROPERTY INSURED

This Policy insures the following property, unless otherwise excluded elsewhere in this Policy, located at an Insured Location or within 1,000 feet thereof, to the extent of the interest of the Insured in such property.

- A. Real Property, including new buildings and additions under construction at an Insured Location, in which the Insured has an insurable interest.
- B. Personal Property:
 - 1) owned by the Insured, including the Insured's interest as a tenant in improvements and betterments. In the event of physical loss or damage, the Company agrees to accept and consider the Insured as sole and unconditional owner of improvements and betterments, notwithstanding any contract or lease to the contrary.
 - 2) of officers and employees of the Insured.
 - 3) of others in the Insured's custody to the extent the Insured is under obligation to keep insured for physical loss or damage insured by this Policy.
 - 4) of others in the Insured's custody to the extent of the Insured's legal liability for physical loss or damage to Personal Property. The Company will defend that portion of any suit against the Insured that alleges such liability and seeks damages for such insured physical loss or damage. The Company may, without prejudice, investigate, negotiate and settle any claim or suit as the Company deems expedient.

This Policy also insures the interest of contractors and subcontractors in insured property during construction at an Insured Location or within 1,000 feet thereof, to the extent of the Insured's legal liability for insured physical loss or damage to such property. Such interest of contractors and subcontractors is limited to the property for which they have been hired to perform work and such interest will not extend to any TIME ELEMENT coverage provided under this Policy.

2. PROPERTY EXCLUDED

This Policy excludes:

- A. currency, money, precious metal in bullion form, notes, or securities.
- B. land, water or any other substance in or on land; except this exclusion does not apply to:
 - 1) land improvements consisting of landscape gardening, roadways and pavements, but not including any fill or land beneath such property.
 - 2) water that is contained within any enclosed tank, piping system or any other processing equipment.

- C. animals, standing timber, growing crops.
- D. watercraft or aircraft, except when unfueled and manufactured by the Insured.
- E. vehicles of officers and employees of the Insured or vehicles otherwise insured for physical loss or damage.
- F. underground mines or mine shafts or any property within such mine or shaft.
- G. dams and dikes.
- H. property in transit, except as otherwise provided by this Policy.
- I. property sold by the Insured under conditional sale, trust agreement, installment plan or other deferred payment plan after delivery to customers, except as provided by the DEFERRED PAYMENTS coverage of this Policy.

3. ADDITIONAL COVERAGES

This Policy includes the following Additional Coverages for physical loss or damage insured by this Policy.

These Additional Coverages:

- 1) are subject to the applicable limit of liability;
- 2) will not increase the Policy limit of liability; and
- 3) are subject to the Policy provisions, including applicable exclusions and deductibles,

all as shown in this section and elsewhere in this Policy.

A. ACCOUNTS RECEIVABLE

This Policy covers any shortage in the collection of accounts receivable, resulting from insured physical loss or damage to accounts receivable records while anywhere within this Policy's TERRITORY, including while in transit. The Company will be liable for the interest charges on any loan to offset impaired collections pending repayment of such sum uncollectible as the result of such loss or damage. Unearned interest and service charges on deferred payment accounts and normal credit losses on bad debts will be deducted in determining the recovery.

- 1) In the event of loss to accounts receivable records, the Insured will use all reasonable efforts, including legal action, if necessary, to effect collection of outstanding accounts receivable.
- 2) The Insured agrees to use any suitable property or service:
 - a) owned or controlled by the Insured; or

b) obtainable from other sources,

in reducing the loss under this Additional Coverage.

- 3) This Policy covers any other necessary and reasonable costs incurred to reduce the loss, to the extent the losses are reduced.
- 4) If it is possible to reconstruct accounts receivable records so that no shortage is sustained, the Company will be liable only for the reasonable and necessary cost incurred for material and time required to re-establish or reconstruct such records, and not for any costs covered by any other insurance.
- 5) ACCOUNTS RECEIVABLE Exclusions: The following exclusions are in addition to the EXCLUSIONS clause of this section:

This Additional Coverage does not insure against shortage resulting from:

- a) bookkeeping, accounting or billing errors or omissions; or
- b) (i) alteration, falsification, manipulation; or

(ii) concealment, destruction or disposal,

of accounts receivable records committed to conceal the wrongful giving, taking, obtaining or withholding of money, securities or other property; but only to the extent of such wrongful giving, taking, obtaining or withholding.

- 6) The settlement of loss will be made within 90 days from the date of physical loss or damage. All amounts recovered by the Insured on outstanding accounts receivable on the date of loss will belong and be paid to the Company up to the amount of loss paid by the Company. All recoveries exceeding the amount paid will belong to the Insured.

B. AUTOMATIC COVERAGE

This Policy covers insured property at any Location rented, leased or purchased by the Insured after the inception date of this Policy. This coverage applies from the date of rental, lease or purchase.

This Additional Coverage does not apply to property insured in whole or in part by any other insurance policy.

This coverage will apply until whichever of the following occurs first:

- 1) The Location is bound by the Company.
- 2) Agreement is reached that the Location will not be insured under this Policy.

- 3) The Time Limit shown in the LIMITS OF LIABILITY clause in the DECLARATIONS section has been reached. The Time Limit begins on the date of rental, lease or purchase.

C. BRANDS AND LABELS

If branded or labeled property insured by this Policy is physically damaged and the Company elects to take all or any part of that property, the Insured may at the Company's expense:

- 1) stamp "salvage" on the property or its containers; or
- 2) remove or obliterate the brands or labels,

if doing so will not damage the property. In either event, the Insured must relabel such property or its containers to be in compliance with any applicable law.

D. CONSEQUENTIAL REDUCTION IN VALUE

This Policy covers the reduction in value of insured merchandise that is a part of pairs, sets, or components, directly resulting from physical loss or damage insured by this Policy to other insured parts of pairs, sets or components of such merchandise. If settlement is based on a constructive total loss, the Insured will surrender the undamaged parts of such merchandise to the Company.

E. CONTROL OF DAMAGED PROPERTY

This Policy gives control of physically damaged property consisting of finished goods manufactured by the Insured as follows:

- 1) The Insured will have full rights to the possession and control of damaged property in the event of insured physical damage to such property provided proper testing is done to show which property is physically damaged.
- 2) The Insured using reasonable judgment will decide if the physically damaged property can be reprocessed or sold.
- 3) Property so judged by the Insured to be unfit for reprocessing or selling will not be sold or disposed of except by the Insured, or with the Insured's consent.
- 4) Any salvage proceeds received will go to the:
 - a) Company at the time of loss settlement; or
 - b) Insured if received prior to loss settlement and such proceeds will reduce the amount of loss payable accordingly.

F. DEBRIS REMOVAL

This Policy covers the reasonable and necessary costs incurred to remove debris from an Insured Location that remains as a direct result of physical loss or damage insured by this Policy.

This Additional Coverage does not cover the costs of removal of:

- 1) contaminated uninsured property; or
- 2) the contaminant in or on uninsured property,

whether or not the contamination results from insured physical loss or damage. Contamination includes, but is not limited to, the presence of pollution or hazardous material.

G. DECONTAMINATION COSTS

If insured property is contaminated as a direct result of physical damage insured by this Policy and there is in force at the time of the loss any law or ordinance regulating contamination, including but not limited to the presence of pollution or hazardous material, then this Policy covers, as a direct result of enforcement of such law or ordinance, the increased cost of decontamination and/or removal of such contaminated insured property in a manner to satisfy such law or ordinance. This Additional Coverage applies only to that part of insured property so contaminated as a direct result of insured physical damage.

The Company is not liable for the costs required for removing contaminated uninsured property nor the contaminant therein or thereon, whether or not the contamination results from an insured event.

H. DEFERRED PAYMENTS

This Policy covers insured physical loss or damage to Personal Property of the type insured sold by the Insured under a conditional sale or trust agreement or any installment or deferred payment plan and after such property has been delivered to the buyer. Coverage is limited to the unpaid balance for such property.

In the event of loss to property sold under deferred payment plans, the Insured will use all reasonable efforts, including legal action, if necessary, to effect collection of outstanding amounts due or to regain possession of the property.

There is no liability under this Policy for loss:

- 1) pertaining to products recalled including, but not limited to, the costs to recall, test or to advertise such recall by the Insured.
- 2) from theft or conversion by the buyer of the property after the buyer has taken possession of such property.

FM

Account No. 1-33186

Policy No. UA864

- 3) to the extent the buyer continues payments.
- 4) not within the TERRITORY of this Policy.

I. DEMOLITION AND INCREASED COST OF CONSTRUCTION

- 1) This Policy covers the reasonable and necessary costs incurred, described in item 3 below, to satisfy the minimum requirements of the enforcement of any law or ordinance regulating the demolition, construction, repair, replacement or use of buildings or structures at an Insured Location, provided:
 - a) such law or ordinance is in force on the date of insured physical loss or damage; and
 - b) its enforcement is a direct result of such insured physical loss or damage.
- 2) This Additional Coverage does not cover loss due to any law or ordinance with which the Insured was required to comply had the loss not occurred.
- 3) This Additional Coverage, as respects the property insured in item 1 above, covers:
 - a) the cost to repair or rebuild the physically damaged portion of such property with materials and in a manner to satisfy such law or ordinance; and
 - b) the cost:
 - (i) to demolish the physically undamaged portion of such property insured; and
 - (ii) to rebuild it with materials and in a manner to satisfy such law or ordinance,to the extent that such costs result when the demolition of the physically damaged insured property is required to satisfy such law or ordinance.
- 4) This Additional Coverage excludes any costs incurred as a direct or indirect result of enforcement of any laws or ordinances regulating any form of contamination including but not limited to the presence of pollution or hazardous material.
- 5) The Company's maximum liability for this Additional Coverage at each Insured Location in any occurrence will not exceed the actual cost incurred in demolishing the physically undamaged portion of the property insured in item 1 above plus the lesser of:
 - a) the reasonable and necessary actual cost incurred, excluding the cost of land, in rebuilding on another site; or
 - b) the cost of rebuilding on the same site.

J. EARTH MOVEMENT

This Policy covers physical loss or damage caused by or resulting from Earth Movement.

This Additional Coverage does not apply to loss or damage caused by or resulting from flood; rising waters; waves; tide or tidal water; the release of water; the rising, overflowing or breaking of boundaries of natural or man-made bodies of water; or the spray therefrom, surface water or sewer back-up resulting from any of the foregoing; all regardless of any other cause or event contributing concurrently or in any other sequence to the loss.

1) References and Application. The following term(s) wherever used in this Policy means:

a) Earth Movement:

Any natural or man-made earth movement including, but not limited to earthquake, landslide or subsidence, regardless of any other cause or event contributing concurrently or in any other sequence of loss. However, physical damage by fire, explosion, or sprinkler leakage resulting from Earth Movement will not be considered to be loss by Earth Movement within the terms and conditions of this Policy. All earth movements within a continuous 72 hour period will be considered a single Earth Movement.

K. ERRORS AND OMISSIONS

If physical loss or damage is not payable under this Policy solely due to an error or unintentional omission:

- 1) in the description of where insured property is physically located;
- 2) to include any Location:
 - a) owned, rented or leased by the Insured on the effective date of this Policy; or
 - b) purchased, rented or leased by the Insured during the term of this Policy; or
- 3) that results in cancellation of the property insured under this Policy;

this Policy covers such physical loss or damage, to the extent it would have provided coverage had such error or unintentional omission not been made.

It is a condition of this Additional Coverage that any error or unintentional omission be reported by the Insured to the Company when discovered and corrected.

L. EXPEDITING COSTS

This Policy covers the reasonable and necessary costs incurred to pay for the temporary repair of insured damage to insured property and to expedite the permanent repair or replacement of such damaged property.

This Additional Coverage does not cover costs:

- 1) recoverable elsewhere in this Policy; or
- 2) of permanent repair or replacement of damaged property.

M. FINE ARTS

This Policy covers insured physical loss or damage to Fine Arts articles while anywhere within this Policy's TERRITORY, including while in transit.

- 1) This Additional Coverage excludes loss or damage if the Fine Arts cannot be replaced with other of like kind and quality, unless it is specifically declared to the Company.
- 2) FINE ARTS Exclusion: The exclusions in the EXCLUSIONS clause of this section do not apply to FINE ARTS coverage except for A1, A2, A6, B1, B2, B3a, B4, B5, and B6. In addition, as respects FINE ARTS, the following exclusions apply:

This Policy does not insure against:

- a) deterioration, wear and tear or inherent vice.
- b) loss or damage from any repairing, restoration or retouching process.
- 3) References and Application. The following term(s) wherever used in this Policy means:
 - a) Fine Arts:

Paintings; etchings; pictures; tapestries; rare or art glass; art glass windows; valuable rugs; statuary; sculptures; antique furniture; antique jewelry; bric-a-brac; porcelains; and similar property of rarity, historical value, or artistic merit excluding automobiles, coins, stamps, furs, jewelry, precious stones, precious metals, watercraft, aircraft, money, securities.

N. FLOOD

This Policy covers physical loss or damage caused by or resulting from Flood.

- 1) References and Application. The following term(s) wherever used in this Policy means:
 - a) Flood:

Flood; rising waters; waves; tide or tidal water; the release of water, the rising, overflowing or breaking of boundaries of natural or man-made bodies of water; or the spray therefrom, surface waters or sewer back-up resulting from any of the foregoing; regardless of any other cause or event contributing concurrently or in any other sequence of loss. However, physical damage by fire, explosion or sprinkler leakage resulting from Flood is not considered to be loss by Flood within the terms and conditions of this Policy.

O. LAND AND WATER CONTAMINANT OR POLLUTANT CLEANUP, REMOVAL AND DISPOSAL

This Policy covers the reasonable and necessary cost for the cleanup, removal and disposal of contaminants or pollutants from uninsured property consisting of land, water or any other substance in or on land at the Insured Location if the release, discharge or dispersal of contaminants or pollutants is a direct result of insured physical loss or damage to insured property.

This Policy does not cover the cost to cleanup, remove and dispose of contaminants or pollutants from such property:

- 1) at any location insured for Personal Property only.
- 2) at any property insured under AUTOMATIC COVERAGE, ERRORS AND OMISSIONS or Miscellaneous Unnamed Location coverage provided by this Policy.
- 3) when the Insured fails to give written notice of loss to the Company within 180 days after inception of the loss.

P. PROFESSIONAL FEES

This Policy covers the actual costs incurred by the Insured, of reasonable fees payable to the Insured's accountants, architects, auditors, engineers, or other professionals and the cost of using the Insured's employees, for producing and certifying any particulars or details contained in the Insured's books or documents, or such other proofs, information or evidence required by the Company resulting from insured loss payable under this Policy for which the Company has accepted liability.

Coverage will not include the fees and costs of attorneys, public adjusters, and loss appraisers, all including any of their subsidiary, related or associated entities either partially or wholly owned by them or retained by them for the purpose of assisting them nor the fees and costs of loss consultants who provide consultation on coverage or negotiate claims.

Q. PROTECTION AND PRESERVATION OF PROPERTY

This Policy covers:

- 1) reasonable and necessary costs incurred for actions to temporarily protect or preserve insured property; provided such actions are necessary due to actual, or to prevent immediately impending, insured physical loss or damage to such insured property.
- 2) reasonable and necessary:
 - a) fire department fire fighting charges imposed as a result of responding to a fire in, on or exposing the insured property.

- b) costs incurred of restoring and recharging fire protection systems following an insured loss.
- c) costs incurred for the water used for fighting a fire in, on or exposing the insured property.

This Additional Coverage is subject to the deductible provisions that would have applied had the physical loss or damage occurred.

R. SERVICE INTERRUPTION PROPERTY DAMAGE

- 1) This Policy covers insured physical loss or damage to insured property at an Insured Location when such physical loss or damage results from the interruption of the specified incoming services consisting of electricity, gas, fuel, steam, water, refrigeration or from the lack of outgoing sewerage service by reason of any accidental occurrence to the facilities of the supplier of such service located within this Policy's TERRITORY, that immediately prevents in whole or in part the delivery of such usable service.
- 2) This Additional Coverage will apply when the Period of Service Interruption is in excess of the time shown as Waiting Period in the WAITING PERIOD clause of the DECLARATIONS section.
- 3) The exclusions in the EXCLUSIONS clause of this section do not apply to SERVICE INTERRUPTION coverage except for:
 - a) A1, A2, A3, A6, B1, B2, B5, B6, D1; and
 - b) B4 with respect to telecommunications.
- 4) Additional General Provisions:
 - a) The Insured will immediately notify the suppliers of services of any interruption of such services.
 - b) The Company will not be liable if the interruption of such services is caused directly or indirectly by the failure of the Insured to comply with the terms and conditions of any contracts the Insured has for the supply of such specified services.
- 5) References and Application. The following term(s) means:
 - a) Period of Service Interruption:

The period starting with the time when an interruption of specific services occurs; and ending when with due diligence and dispatch the service could be wholly restored.

S. TAX TREATMENT OF PROFITS

This Policy is extended to cover the increased tax liability from an insured loss at an Insured Location if the tax treatment of:

- 1) the profit portion of a loss payment under this Policy involving finished stock manufactured by the Insured; and/or
- 2) the profit portion of a TIME ELEMENT loss payment under this Policy;

is greater than the tax treatment of profits that would have been incurred had no loss occurred.

T. TEMPORARY REMOVAL OF PROPERTY

- 1) When insured property is removed from an Insured Location for the purpose of being repaired or serviced or in order to avoid threatened physical loss or damage of the type insured by this Policy, this Policy covers such property:
 - a) while at the location to which such property has been moved; and
 - b) for physical loss or damage as provided at the Insured Location from which such property was removed.
- 2) This Additional Coverage does not apply to property:
 - a) insured, in whole or in part, elsewhere in this Policy.
 - b) insured, in whole or in part, by any other insurance policy.
 - c) removed for normal storage, processing or preparation for sale or delivery.

U. TRANSPORTATION

- 1) This Policy covers the following Personal Property, except as excluded by this Policy, while in transit within the TERRITORY of this Policy:
 - a) owned by the Insured.
 - b) shipped to customers under F.O.B., C & F or similar terms. The Insured's contingent interest in such shipments is admitted.
 - c) of others in the actual or constructive custody of the Insured to the extent of the Insured's interest or legal liability.
 - d) of others sold by the Insured, that the Insured has agreed prior to the loss to insure during course of delivery.

- 2) This Additional Coverage excludes:
- a) samples in the custody of salespeople or selling agents.
 - b) property insured under import or export ocean marine insurance.
 - c) waterborne shipments, unless:
 - (i) by inland water; or
 - (ii) by coastal shipments.
 - d) waterborne shipments via Panama Canal or to and from Alaska, Puerto Rico, and Hawaii.
 - e) airborne shipments unless by regularly scheduled passenger airlines or air freight carriers.
 - f) property of others, including the Insured's legal liability for it, hauled on vehicles owned, leased or operated by the Insured when acting as a common or contract carrier.
 - g) any transporting vehicle.
- 3) Coverage Attachment and Duration:
- a) This Additional Coverage covers from the time the property leaves the original point of shipment for transit until the property arrives at the destination.
 - b) However, coverage on export shipments not insured under ocean cargo policies ends when the property is loaded on board overseas vessels or aircraft. Coverage on import shipments not insured under ocean cargo policies begins after discharge from overseas vessels or aircraft.
- 4) This Additional Coverage:
- a) covers general average and salvage charges on shipments covered while waterborne.
 - b) insures physical loss or damage caused by or resulting from:
 - (i) unintentional acceptance of fraudulent bills of lading, shipping or messenger receipts.
 - (ii) improper parties having gained possession of property through fraud or deceit.
- 5) The exclusions in the EXCLUSIONS clause of this section do not apply to TRANSPORTATION coverage except for A1 through A4, B1 through B6, C1, C3, C5, C6, D1 through D3.

6) Additional General Provisions:

- a) This Additional Coverage will not inure directly or indirectly to the benefit of any carrier or bailee.
- b) The Insured has permission, without prejudicing this insurance, to accept:
 - (i) ordinary bills of lading used by carriers;
 - (ii) released bills of lading;
 - (iii) undervalued bills of lading; and
 - (iv) shipping or messenger receipts.
- c) The Insured may waive subrogation against railroads under side track agreements.

Except as otherwise stated, the Insured will not enter into any special agreement with carriers releasing them from their common law or statutory liability.

V. VALUABLE PAPERS AND RECORDS

This Policy covers insured physical loss or damage to VALUABLE PAPERS AND RECORDS while anywhere within this Policy's TERRITORY, including while in transit.

- 1) This Additional Coverage excludes loss or damage to:
 - a) property described below, if such property cannot be replaced with other of like kind and quality, unless specifically declared to the Company.
 - b) currency, money or securities.
 - c) property held as samples or for sale or for delivery after sale.
- 2) VALUABLE PAPERS AND RECORDS Exclusions: The exclusions in the EXCLUSIONS clause of this section do not apply to VALUABLE PAPERS AND RECORDS coverage except for A1, A2, A6, B1, B2, B3a, B4, B5, and B6. In addition, as respects VALUABLE PAPERS AND RECORDS the following exclusions apply:

This Policy does not insure:

- a) errors or omissions in processing, or copying; all unless physical damage not excluded by this Policy results, in which event, only that resulting damage is insured.
- b) loss or damage to media, data or programs from errors or omissions in programming or machine instructions; all unless physical damage not excluded by this Policy results, in which event, only that resulting damage is insured.

- c) deterioration, inherent vice, vermin or wear and tear; all unless physical damage not excluded by this Policy results, in which event, only that resulting damage is insured.
- 3) References and Application. The following term(s) wherever used in this Policy means:
 - a) Valuable Papers and Records:
 - (i) Media, data and programs for electronic, electro-mechanical and electro-magnetic data processing and production equipment.
 - (ii) Written, printed or otherwise inscribed documents and records, including books, maps, films, drawings, abstracts, deeds, mortgages and manuscripts, all of which must be of value to the Insured.

4. APPLICATION OF POLICY TO DATE OR TIME RECOGNITION

- A. With respect to situations caused by the so-called "Year 2000" problem or any other Date or Time Recognition problem by Electronic Data Processing Equipment or Media, this Policy applies as follows.
 - 1) This Policy does not pay for remediation, change, correction, repair or assessment of any Year 2000 or any other Date or Time Recognition problem in any Electronic Data Processing Equipment or Media, whether preventative or remedial, and whether before or after a loss, including temporary protection and preservation of property. This Policy does not pay for any TIME ELEMENT loss resulting from the foregoing remediation, change, correction, repair or assessment.
 - 2) Failure of Electronic Data Processing Equipment or Media to correctly recognize, interpret, calculate, compare, differentiate, sequence, access or process data involving one or more dates or times, including the Year 2000, is not physical loss or damage insured against by this Policy. This Policy does not pay for any such incident or for any TIME ELEMENT loss resulting from any such incident.

Subject to all of its terms and conditions, this Policy does pay for physical loss or damage not excluded by this Policy that results from a failure of Electronic Data Processing Equipment or Media to correctly recognize, interpret, calculate, compare, differentiate, sequence, access or process data involving one or more dates or times, including the Year 2000. Such covered resulting physical loss or damage does not include any loss, cost or expense described in 1 or 2 above. If such covered resulting physical loss or damage occurs, and if this Policy provides TIME ELEMENT coverage, then, subject to all of its terms and conditions, this Policy also covers any insured Time Element loss directly resulting therefrom.

B. References and Application. The following term(s) wherever used in this Policy means:

1) Date or Time Recognition:

The recognition, interpretation, calculation, comparison, differentiation, sequencing, accessing or processing of data involving one or more dates or times, including the Year 2000.

2) Electronic Data Processing Equipment or Media:

Any computer, computer system or component, hardware, network, microprocessor, microchip, integrated circuit or similar devices or components in computer or non-computer equipment, operating systems, data, programs or other software stored on electronic, electro-mechanical, electro-magnetic data processing or production equipment, whether the property of the Insured or not.

5. EXCLUSIONS

The following exclusions apply unless specifically stated elsewhere in this Policy:

A. This Policy excludes:

- 1) indirect or remote loss or damage.
- 2) interruption of business, except to the extent provided by this Policy.
- 3) loss of market or loss of use.
- 4) loss or damage or deterioration arising from any delay.
- 5) mysterious disappearance, loss or shortage disclosed on taking inventory, or any unexplained loss.
- 6) loss from enforcement of any law or ordinance:
 - a) regulating the construction, repair, replacement, use or removal, including debris removal, of any property; or
 - b) requiring the demolition of any property, including the cost in removing its debris;

except as provided by the DECONTAMINATION COSTS and DEMOLITION AND INCREASED COST OF CONSTRUCTION coverages of this section of this Policy.

B. This Policy excludes loss or damage directly or indirectly caused by or resulting from any of the following regardless of any other cause or event, whether or not insured under this Policy, contributing concurrently or in any other sequence to the loss:

- 1) nuclear reaction or nuclear radiation or radioactive contamination. However:
- a) if physical damage by fire or sprinkler leakage results, then only that resulting damage is insured; but not including any loss or damage due to nuclear reaction, radiation or radioactive contamination.
 - b) this Policy does insure physical damage directly caused by sudden and accidental radioactive contamination, including resultant radiation damage, from material used or stored or from processes conducted on the Insured Location, provided that on the date of loss, there is neither a nuclear reactor nor any new or used nuclear fuel on the Insured Location.
- 2) a) hostile or warlike action in time of peace or war, including action in hindering, combating or defending against an actual, impending or expected attack by any:
- (i) government or sovereign power (de jure or de facto);
 - (ii) military, naval or air force; or
 - (iii) agent or authority of any party specified in i or ii above.
- Item iii of this exclusion does not apply to physical loss or damage insured by this Policy done by terrorists or done secretly by a foreign enemy or agent of any government or sovereign power (de jure or de facto), when not in connection with the operations of armed forces in or against the country where the Insured Location is situated.
- b) discharge, explosion or use of any nuclear device, weapon or material employing or involving nuclear fission, fusion or radioactive force, whether in time of peace or war and regardless of who commits the act.
 - c) insurrection, rebellion, revolution, civil war, usurped power, or action taken by governmental authority in hindering, combating or defending against such an event.
 - d) seizure or destruction under quarantine or custom regulation, or confiscation by order of any governmental or public authority.
 - e) risks of contraband, or illegal transportation or trade.
- 3) any dishonest act, including but not limited to theft, committed alone or in collusion with others, at any time:
- a) by an Insured or any proprietor, partner, director, trustee, officer, or employee of an Insured; or
 - b) by any proprietor, partner, director, trustee, or officer of any business or entity (other than a common carrier) engaged by an Insured to do anything in connection with property insured under this Policy.

This Policy does insure acts of direct insured physical damage intentionally caused by an employee of an Insured or any individual specified in b above, and done without the knowledge of the Insured. In no event does this Policy cover loss by theft by any individual specified in a or b above.

- 4) lack of incoming electricity, fuel, water, gas, steam, refrigerant or telecommunications service or sewerage service caused by an occurrence off the Insured Location, except as provided in SERVICE INTERRUPTION in the PROPERTY DAMAGE or TIME ELEMENT section of this Policy. But, if the lack of such a service directly causes physical damage insured by this Policy on the Insured Location, then only that resulting damage is insured.
 - 5) Earth Movement in California, Alaska, Hawaii and Puerto Rico.
 - 6) Flood in areas designated Zone A or Zone V by the Federal Emergency Management Agency (FEMA).
- C. This Policy excludes the following, but, if physical damage not excluded by this Policy results, then only that resulting damage is insured:
- 1) faulty workmanship, material, construction or design from any cause.
 - 2) loss or damage to stock or material attributable to manufacturing or processing operations while such stock or material is being processed, manufactured, tested, or otherwise worked on.
 - 3) deterioration, depletion, rust, corrosion or erosion, wear and tear, inherent vice or latent defect.
 - 4) settling, cracking, shrinking, bulging, or expansion of:
 - a) foundations (including any pedestal, pad, platform or other property supporting machinery).
 - b) floors.
 - c) pavements.
 - d) walls.
 - e) ceilings.
 - f) roofs.
 - 5) a) changes of temperature damage (except to machinery or equipment); or
 - b) changes in relative humidity damage,

all whether atmospheric or not.

6) insect, animal or vermin damage.

D. This Policy excludes the following unless directly resulting from other physical damage not excluded by this Policy:

- 1) contamination including but not limited to the presence of pollution or hazardous material.
- 2) shrinkage.
- 3) changes in color, flavor, texture or finish.

TIME ELEMENT - SECTION C**1. LOSS INSURED**

- A. This Policy insures TIME ELEMENT loss, as provided in the TIME ELEMENT COVERAGES, directly resulting from physical loss or damage of the type insured by this Policy:
- 1) to property described elsewhere in this Policy and not otherwise excluded by this Policy or otherwise limited in the TIME ELEMENT COVERAGES below;
 - 2) used by the Insured, or for which the Insured has contracted use;
 - 3) located at an Insured Location; and
 - 4) during the Periods of Liability described in this section.
- B. This Policy insures TIME ELEMENT loss only to the extent it cannot be reduced through:
- 1) the use of any property or service owned or controlled by the Insured;
 - 2) the use of any property or service obtainable from other sources;
 - 3) working extra time or overtime; or
 - 4) the use of inventory,
- all whether at an Insured Location or at any other location. The Company reserves the right to take into consideration the combined operating results of all associated, affiliated or subsidiary companies of the Insured in determining the TIME ELEMENT loss.
- C. This Policy covers expenses reasonably and necessarily incurred by the Insured to reduce the loss otherwise payable under this section of this Policy. The amount of such recoverable expenses will not exceed the amount by which the loss has been reduced.
- D. Except as respects LEASEHOLD INTEREST, in determining the amount of loss payable, the Company will consider the experience of the business before and after and the probable experience during the PERIOD OF LIABILITY.

2. TIME ELEMENT COVERAGES**A. GROSS EARNINGS**

- 1) Measurement of Loss:
 - a) The recoverable GROSS EARNINGS loss is the Actual Loss Sustained by the Insured of the following during the PERIOD OF LIABILITY:
 - (i) Gross Earnings;

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(ii) less all charges and expenses that do not necessarily continue during the interruption of production or suspension of business operations or services;

(iii) less ordinary payroll;

(iv) plus all other earnings derived from the operation of the business.

b) In determining the indemnity payable as the Actual Loss Sustained, the Company will consider the continuation of only those normal charges and expenses that would have been earned had no interruption of production or suspension of business operations or services occurred.

c) There is recovery hereunder but only to the extent that the Insured is:

(i) wholly or partially prevented from producing goods or continuing business operations or services;

(ii) unable to make up lost production within a reasonable period of time, not limited to the period during which production is interrupted;

(iii) unable to continue such operations or services during the PERIOD OF LIABILITY; and

(iv) able to demonstrate a loss of sales for the operations, services or production prevented.

2) References and Application. The following term(s) means:

Gross Earnings, as used in item 1a):

a) for manufacturing operations: the net sales value of production less the cost of all raw stock, materials and supplies used in such production; or

b) for mercantile or non-manufacturing operations: the total net sales less cost of merchandise sold, materials and supplies consumed in the operations or services rendered by the Insured.

Any amount recovered under property damage coverage at selling price for loss or damage to merchandise will be considered to have been sold to the Insured's regular customers and will be credited against net sales.

B. EXTRA EXPENSE

1) Measurement of Loss:

The recoverable EXTRA EXPENSE loss will be the reasonable and necessary extra costs incurred by the Insured of the following during the PERIOD OF LIABILITY:

- a) Extra expenses to temporarily continue as nearly normal as practicable the conduct of the Insured's business; and
- b) Extra costs of temporarily using property or facilities of the Insured or others, less any value remaining at the end of the PERIOD OF LIABILITY for property obtained in connection with the above.
- 2) EXTRA EXPENSE Exclusions: As respects EXTRA EXPENSE, the following are also excluded:
- a) Any loss of income.
- b) Costs that normally would have been incurred in conducting the business during the same period had no physical loss or damage occurred.
- c) Cost of permanent repair or replacement of property that has been damaged or destroyed.
- d) Any expense recoverable elsewhere in this Policy.
- 3) References and Application. The following term(s) means:
- a) Normal:

The condition that would have existed had no physical loss or damage occurred.

C. LEASEHOLD INTEREST

1) Measurement of Loss:

The recoverable LEASEHOLD INTEREST incurred by the Insured of the following:

- a) If the lease agreement requires continuation of rent; and if the property is wholly untenable or unusable, the actual rent payable for the unexpired term of the lease; or if the property is partially untenable or unusable, the proportion of the rent payable for the unexpired term of the lease.
- b) If the lease is canceled by the lessor pursuant to the lease agreement or by the operation of law; the Lease Interest for the first three months following the loss; and the Net Lease Interest for the remaining unexpired term of the lease.
- 2) LEASEHOLD INTEREST Exclusions: As respects LEASEHOLD INTEREST, TIME ELEMENT EXCLUSIONS A, B, and C do not apply and the following applies instead:

This Policy does not insure any increase in loss resulting from the suspension, lapse or cancellation of any license, or from the Insured exercising an option to cancel the lease; or from any act or omission of the Insured that constitutes a default under the lease.

In addition, there is no coverage for the Insured's loss of LEASEHOLD INTEREST directly resulting from physical loss or damage to Personal Property.

3) References and Application. The following term(s) means:

a) Lease Interest:

The excess rent paid for the same or similar replacement property over actual rent payable plus cash bonuses or advance rent paid (including maintenance or operating charges) for each month during the unexpired term of the Insured's lease.

b) Net Lease Interest:

That sum which placed at 6% interest rate compounded annually would equal the Lease Interest (less any amounts otherwise payable hereunder).

D. RENTAL INSURANCE

1) Measurement of Loss:

The recoverable RENTAL INSURANCE loss is the Actual Loss Sustained by the Insured of the following during the PERIOD OF LIABILITY:

- a) The fair rental value of any portion of the property occupied by the Insured;
- b) The income reasonably expected from rentals of unoccupied or unrented portions of such property; and
- c) The rental income from the rented portions of such property according to bona fide leases, contracts or agreements in force at the time of loss,

all not to include noncontinuing charges and expenses.

2) RENTAL INSURANCE Exclusions: As respects RENTAL INSURANCE, TIME ELEMENT EXCLUSIONS A does not apply and the following applies instead:

- A. This Policy does not insure any loss of rental income during any period in which the insured property would not have been tenantable for any reason other than an insured loss.

E. COMMISSIONS, PROFITS AND ROYALTIES

1) Measurement of Loss:

- a) The recoverable COMMISSIONS, PROFITS AND ROYALTIES loss is the Actual Loss Sustained by the Insured of the following during the PERIOD OF LIABILITY:

- (i) Commissions, Profits and Royalties;

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- (ii) Less noncontinuing expenses and charges during the PERIOD OF LIABILITY.
- b) The Commissions, Profits And Royalties payable hereunder will be the Actual Loss Sustained of income to the Insured during the PERIOD OF LIABILITY under any royalty, licensing fee or commission agreement between the Insured and another party which is not realizable due to physical loss or damage insured by this Policy to property of the other party of the type insured by this Policy located within the Policy's TERRITORY.
- c) The Insured will influence, to the extent possible, said party(ies) with whom the agreements described above have been made to use any other machinery, supplies or locations in order to resume business so as to reduce the amount of loss hereunder, and the Insured will cooperate with that party in every way to effect this. This Policy does not cover any cost to effect the above unless authorized in advance by the Company.
- d) In determining the indemnity payable hereunder, the Company will consider the amount of income derived from such agreements before and the probable amount of income after the date of loss or damage.
- e) There is recovery hereunder but only if such loss or damage interrupts the delivery of goods in whole or in part to the Insured or for their account.
- 2) COMMISSIONS, PROFITS AND ROYALTIES Exclusions: As respects COMMISSIONS, PROFITS AND ROYALTIES, TIME ELEMENT EXCLUSIONS C does not apply.
- 3) References and Application. The following term(s) means:
- a) Commissions:
- The income that would have been received by the Insured from the sale of goods not owned by the Insured.
- b) Profits:
- The amount that would have been received by the Insured from the sale of goods belonging to the Insured, in excess of the cost to the Insured of such goods.
- c) Royalties:
- The income the Insured is not able to collect under royalty or licensing agreements.

3. TIME ELEMENT COVERAGE EXTENSIONS

A. CONTINGENT TIME ELEMENT

This Policy covers the Actual Loss Sustained and EXTRA EXPENSE incurred by the Insured during the PERIOD OF LIABILITY:

- 1) directly resulting from physical loss or damage of the type insured; and
- 2) to property of the type insured,

at any locations of direct suppliers or customers located within the TERRITORY of this Policy.

The term "supplier or customer" does not include any company supplying to or receiving from the Insured Location, as described elsewhere in this Policy, electricity, fuel, gas, water, steam, refrigeration, sewage or telecommunications.

B. EXTENDED PERIOD OF LIABILITY

The GROSS EARNINGS coverage is extended to cover the reduction in sales resulting from:

- 1) the interruption of business as covered by GROSS EARNINGS;
- 2) for such additional length of time as would be required with the exercise of due diligence and dispatch to restore the Insured's business to the condition that would have existed had no loss occurred; and
- 3) commencing with the date on which the liability of the Company for loss resulting from interruption of business would terminate if this Extension had not been included herein.

EXTENDED PERIOD OF LIABILITY Exclusions: As respects EXTENDED PERIOD OF LIABILITY, the TIME ELEMENT EXCLUSIONS B of this section does not apply and the following applies instead:

This Policy does not insure against any increase in loss due to fines or damages for breach of contract or for late or noncompletion of orders, or penalties of any nature.

Coverage under this Extension for the reduction in sales due to contract cancellation will include only those sales that would have been earned under the contract during the extended period of liability.

Coverage under this Extension does not apply for more than the number of consecutive days shown in the LIMITS OF LIABILITY clause of the DECLARATIONS section.

C. INGRESS/EGRESS

This Policy covers the Actual Loss Sustained and EXTRA EXPENSE incurred by the Insured due to the necessary interruption of the Insured's business due to prevention of ingress to or egress from an Insured Location, whether or not the premises or property of the Insured is damaged, provided that such prevention is a direct result of physical damage of the type insured by this Policy, to the kind of property not excluded by this Policy.

INGRESS/EGRESS Exclusions: As respects INGRESS/EGRESS, the following exclusions are applicable:

This Policy does not insure loss resulting from:

- 1) lack of incoming or outgoing service consisting of electric, fuel, gas, water, steam, refrigerant, sewerage and telecommunications.
- 2) picketing or other action by strikers except for physical damage not excluded by this Policy.

This Policy does not provide coverage under this Extension for more than the number of consecutive days shown in the LIMITS OF LIABILITY clause of the DECLARATIONS section.

D. ON PREMISES SERVICES

This Policy covers the Actual Loss Sustained and EXTRA EXPENSE incurred by the Insured during the PERIOD OF LIABILITY directly resulting from physical loss or damage of the type insured to the following property located within 1,000 feet of the Insured Location:

- 1) Electrical and telecommunications equipment.
- 2) Electrical, telecommunications, fuel, gas, water, steam, refrigeration and sewerage transmission lines.

E. PROTECTION AND PRESERVATION OF PROPERTY – TIME ELEMENT

This Policy covers the Actual Loss Sustained by the Insured for a period of time not to exceed 48 hours prior to and 48 hours after the Insured first taking reasonable action for the temporary protection and preservation of property insured by this Policy provided such action is necessary to prevent immediately impending physical loss or damage insured by this Policy at such insured property.

This Extension is subject to the deductible provisions that would have applied had the physical loss or damage occurred.

F. RELATED REPORTED VALUES

If reported TIME ELEMENT values include:

- 1) locations used by the Insured (such as branch stores, sales outlets and other plants) but not listed on a schedule under this Policy; and
- 2) a TIME ELEMENT loss would result at such locations,
- 3) from insured physical loss or damage at an Insured Location,

then this Policy provides coverage for such resulting TIME ELEMENT loss in accordance with the coverage applicable at such Insured Location.

G. RESEARCH AND DEVELOPMENT

The GROSS EARNINGS coverage is extended to insure the Actual Loss Sustained by the Insured of continuing fixed charges excluding ordinary payroll directly attributable to the interruption of research and development activities, that in themselves would not have produced income during the PERIOD OF LIABILITY.

The PERIOD OF LIABILITY for this TIME ELEMENT COVERAGE EXTENSION will be the period from the time of direct physical loss or damage of the type insured by this Policy to the time when the property could be repaired or replaced and made ready for operations, but not to be limited by the date of expiration of this Policy.

H. SERVICE INTERRUPTION TIME ELEMENT

- 1) This Policy covers the Actual Loss Sustained and EXTRA EXPENSE incurred by the Insured during the Period of Service Interruption at Insured Locations when the loss is caused by the interruption of incoming services consisting of electricity, gas, fuel, steam, water, refrigeration or from the lack of outgoing sewerage service by reason of any accidental occurrence to the facilities of the supplier of such service located within this Policy's TERRITORY, that immediately prevents in whole or in part the delivery of such usable services.
- 2) This Extension will apply when the Period of Service Interruption is in excess of the time shown as Waiting Period in the WAITING PERIOD clause of the DECLARATIONS section.
- 3) The exclusions in the EXCLUSIONS clause of the PROPERTY DAMAGE section do not apply to SERVICE INTERRUPTION TIME ELEMENT coverage except for:
 - a) A1, A2, A3, A6, B1, B2, B5, B6, D1, and
 - b) B4 with respect to telecommunications.

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- 4) Additional General Provisions:
- a) The Insured will immediately notify the suppliers of services of any interruption of such services.
 - b) The Company will not be liable if the interruption of such services is caused directly or indirectly by the failure of the Insured to comply with the terms and conditions of any contracts the Insured has for the supply of such specified services.
- 5) References and Application. The following term(s) means:
- a) Period of Service Interruption:
 - (i) The period starting with the time when an interruption of specified services occurs; and ending when with due diligence and dispatch the service could be wholly restored and the Location receiving the service could or would have resumed normal operations following the restorations of service under the same or equivalent physical and operating conditions as provided by the PERIOD OF LIABILITY clause in this section.
 - (ii) The Period of Service Interruption is limited to only those hours during which the Insured would or could have used services(s) if it had been available.
 - (iii) The Period of Service Interruption does not extend to include the interruption of operations caused by any reason other than interruption of the specified service(s).

4. PERIOD OF LIABILITY

- A. The PERIOD OF LIABILITY applying to all TIME ELEMENT COVERAGES, except LEASEHOLD INTEREST and as shown below, or if otherwise provided under the TIME ELEMENT COVERAGE EXTENSIONS, is as follows:

- 1) For building and equipment, the period:
 - a) starting from the time of physical loss or damage of the type insured against; and
 - b) ending when with due diligence and dispatch the building and equipment could be:
 - (i) repaired or replaced; and
 - (ii) made ready for operations,

under the same or equivalent physical and operating conditions that existed prior to the damage.
 - c) not to be limited by the expiration of this Policy.
- 2) For building and equipment under construction:

- a) the equivalent of the above period of time will be applied to the level of business that would have been reasonably achieved after construction and startup would have been completed had no physical damage happened; and
- b) due consideration will be given to the actual experience of the business compiled after completion of the construction and startup.

This item does not apply to COMMISSIONS, PROFITS AND ROYALTIES.

- 3) For stock-in-process and mercantile stock, including finished goods not manufactured by the Insured, the time required with the exercise of due diligence and dispatch:
 - a) to restore stock in process to the same state of manufacture in which it stood at the inception of the interruption of production or suspension of business operations or services; and
 - b) to replace physically damaged mercantile stock.

This item does not apply to RENTAL INSURANCE.

- 4) For raw materials and supplies, the period of time:
 - a) of actual interruption of production or suspension of operations or services resulting from the inability to get suitable raw materials and supplies to replace similar ones damaged; but
 - b) limited to that period for which the damaged raw materials and supplies would have supplied operating needs.
- 5) If water:
 - a) used for any manufacturing purpose, including but not limited to as a raw material or for power;
 - b) stored behind dams or in reservoirs; and
 - c) on any Insured Location,

is released as the result of physical damage of the type insured against under this Policy to such dam, reservoir or connected equipment, the Company's liability for the actual interruption of production or suspension of operations or services due to inadequate water supply will not extend beyond 30 consecutive days after the damaged dam, reservoir or connected equipment has been repaired or replaced.

This item does not apply to RENTAL INSURANCE.

- 6) For physically damaged exposed films, records, manuscripts and drawings, the time required to copy from backups or from originals of a previous generation. This time

does not include research, engineering or any other time necessary to restore or recreate lost information.

This item does not apply to RENTAL INSURANCE.

- 7) For physically damaged or destroyed data, programs or other software stored on electronic, electro-mechanical, electro-magnetic data processing or production equipment, the time to recreate or restore including the time for researching or engineering lost information.

This item does not apply to RENTAL INSURANCE.

- 8) If an order of civil authority prohibits access to the Insured Location and provided such order is the direct result of physical damage of the type insured against under this Policy at the Insured Location or within 1,000 feet of it, the period of time:

- a) starting at the time of such physical damage; but
- b) not to exceed 30 consecutive days.

- B. The PERIOD OF LIABILITY does not include any additional time due to the Insured's inability to resume operations for any reason, including but not limited to:

- 1) making changes to equipment.
- 2) making changes to the buildings or structures except as provided in the DEMOLITION AND INCREASED COST OF CONSTRUCTION clause in the PROPERTY DAMAGE section.
- 3) restaffing or retraining employees.

If two or more Periods of Liability apply such periods will not be cumulative.

5. TIME ELEMENT EXCLUSIONS

In addition to the exclusions elsewhere in this Policy, the following exclusions apply to TIME ELEMENT loss:

This Policy does not insure against:

- A. Any loss during any idle period, including but not limited to when production, operation, service or delivery or receipt of goods would cease, or would not have taken place or would have been prevented due to:
- 1) physical loss or damage not insured by this Policy on or off of the Insured Location.
 - 2) planned or rescheduled shutdown.
 - 3) strikes or other work stoppage.



- 4) any other reason other than physical loss or damage insured by this Policy.
- B. Any increase in loss due to:
 - 1) suspension, cancellation or lapse of any lease, contract, license or orders.
 - 2) fines or damages for breach of contract or for late or noncompletion of orders.
 - 3) for penalties of any nature.
 - 4) any other consequential or remote loss. /
- C. Any loss resulting from loss or damage to finished goods manufactured by the Insured, nor the time required for their reproduction.

LOSS ADJUSTMENT AND SETTLEMENT - SECTION D**1. LOSS ADJUSTMENT/PAYABLE**

Loss, if any, will be adjusted with and payable to Clark County Department of Aviation, or as may be directed by Clark County Department of Aviation. Additional insured interests will also be included in loss payment as their interests may appear when named as additional named insured, lender, mortgagee and/or loss payee in the Certificates of Insurance on file with the Company or named below.

2. CURRENCY FOR LOSS PAYMENT

Losses will be adjusted and paid in the currency of the United States of America. But, in Canada losses will be paid in Canadian currency, unless directed otherwise by the Insured.

3. VALUATION

Adjustment of the physical loss amount under this Policy will be computed as of the date of loss at the location of the loss, and for no more than the interest of the Insured, subject to the following:

- A. On stock in process, the value of raw materials and labor expended plus the proper proportion of overhead charges.
- B. On finished goods manufactured by the Insured, the regular cash selling price at the Location where the loss happens, less all discounts and charges to which the finished goods would have been subject had no loss happened.
- C. On raw materials, supplies and other merchandise not manufactured by the Insured:
 - 1) if repaired or replaced, the actual expenditure incurred in repairing or replacing the damaged or destroyed property; or
 - 2) if not repaired or replaced, the Actual Cash Value.
- D. On exposed films, records, manuscripts and drawings, that are not Valuable Papers and Records, the value blank plus the cost of copying information from back-up or from originals of a previous generation. These costs will not include research, engineering or any costs of restoring or recreating lost information.
- E. On property covered under DEFERRED PAYMENTS, the lesser of the:
 - 1) total amount of unpaid installments less finance charges.
 - 2) Actual Cash Value of the property at the time of loss.
 - 3) cost to repair or replace with material of like size, kind and quality.

F. On FINE ARTS articles, the lesser of:

- 1) the reasonable and necessary cost to repair or restore such property to the physical condition that existed on the date of loss.
- 2) cost to replace the article.
- 3) the value, if any, stated on a schedule on file with the Company.

In the event a Fine Arts article is part of a pair or set, and a physically damaged article cannot be replaced, or repaired or restored to the condition that existed immediately prior to the loss, the Company will be liable for the lesser of the full value of such pair or set or the amount designated on the schedule. The Insured agrees to surrender the pair or set to the Company.

G. On VALUABLE PAPERS AND RECORDS:

- 1) On data, programs or software stored on electronic, electro-mechanical, or electro-magnetic data processing or production equipment:
 - a) The cost to repair, replace or restore data, programs or software including the costs to recreate, research and engineer;
 - b) If not repaired, replaced or restored within two years from the date of loss, the blank value of the media.
- 2) On all other VALUABLE PAPERS AND RECORDS, the lesser of the following:
 - a) The cost to repair or restore the item to the condition that existed immediately prior to the loss.
 - b) The cost to replace the item.
 - c) The amount designated for the item on the schedule on file with the Company.

H. On property in transit:

- 1) Property shipped to or for the account of the Insured will be valued at actual invoice to the Insured. Included in the value are accrued costs and charges legally due. Charges may include the Insured's commission as selling agent.
- 2) Property sold by the Insured and shipped to or for the purchaser's account will be valued at the Insured's selling invoice amount. Prepaid or advanced freight costs are included.
- 3) Property not under invoice will be valued:
 - a) for property of the Insured, at the valuation provisions of this Policy applying at the location from which the property is being transported; or

- b) for other property, at the actual cash market value at the destination point on the date of occurrence,

less any charges saved which would have become due and payable upon arrival at destination.

I. On all other property, the loss amount will not exceed the lesser of the following:

- 1) The cost to repair.
- 2) The cost to rebuild or replace on the same site with new materials of like size, kind and quality.
- 3) The cost in rebuilding, repairing or replacing on the same or another site, but not to exceed the size and operating capacity that existed on the date of loss.
- 4) The selling price of real property or machinery and equipment, other than stock, offered for sale on the date of loss.
- 5) The cost to replace unrepairable electrical or mechanical equipment, including computer equipment, with equipment that is the most functionally equivalent to that damaged or destroyed, even if such equipment has technological advantages and/or represents an improvement in function and/or forms part of a program of system enhancement.
- 6) The increased cost of demolition, if any, resulting from loss covered by this Policy, if such property is scheduled for demolition.
- 7) The unamortized value of improvements and betterments, if such property is not repaired or replaced at the Insured's expense.
- 8) The Actual Cash Value if such property is:
 - a) useless to the Insured; or
 - b) not repaired, replaced or rebuilt on the same or another site within two years from the date of loss.

The Insured may elect not to repair or replace the insured real and/or personal property lost, damaged or destroyed. Loss settlement may be elected on the lesser of repair or replacement cost basis if the proceeds of such loss settlement are expended on other capital expenditures related to the Insured's operations within two years from the date of loss. As a condition of collecting under this item, such expenditure must be unplanned as of the date of loss and be made at an Insured Location under this Policy. This item does not extend to DEMOLITION AND INCREASED COST OF CONSTRUCTION.

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References and Application. The following term(s) wherever used in this Policy means:

a) Actual Cash Value:

The amount it would cost to repair or replace insured property, on the date of loss, with material of like kind and quality, with proper deduction for obsolescence and physical depreciation.

4. LOSS CONDITIONS

A. REQUIREMENTS IN CASE OF LOSS

The Insured will:

- 1) give immediate written notice to the Company of any loss.
- 2) protect the property from further loss or damage.
- 3) promptly separate the damaged and undamaged property; put it in the best possible order; and furnish a complete inventory of the lost, destroyed, damaged and undamaged property showing in detail the quantities, costs, Actual Cash Value, replacement value and amount of loss claimed.
- 4) give a signed and sworn proof of loss to the Company within 90 days after the loss, unless that time is extended in writing by the Company. The proof of loss must state the knowledge and belief of the Insured as to:
 - a) the time and origin of the loss.
 - b) the Insured's interest and that of all others in the property.
 - c) the Actual Cash Value and replacement value of each item and the amount of loss to each item; all encumbrances; and all other contracts of insurance, whether valid or not, covering any of the property.
 - d) any changes in the title, use, occupation, location, possession or exposures of the property since the effective date of this Policy.
 - e) by whom and for what purpose any location insured by this Policy was occupied on the date of loss, and whether or not it then stood on leased ground.
- 5) include a copy of all the descriptions and schedules in all policies and, if required, provide verified plans and specifications of any buildings, fixtures, machinery or equipment destroyed or damaged.
- 6) further, the Insured, will as often as may be reasonably required:
 - a) exhibit to any person designated by the Company all that remains of any property;

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- b) submit to examination under oath by any person designated by the Company and sign the written records of examinations; and
- c) produce for examination at the request of the Company:
 - (i) all books of accounts, business records, bills, invoices and other vouchers; or
 - (ii) certified copies if originals are lost,

at such reasonable times and places that may be designated by the Company or its representative and permit extracts and machine copies to be made.

B. COMPANY OPTION

The Company has the option to take all or any part of damaged property at the agreed or appraised value. The Company must give notice to the Insured of its intention to do so within 30 days after receipt of proof of loss.

C. ABANDONMENT

There may be no abandonment of any property to the Company.

D. SUBROGATION

The Insured is required to cooperate in any subrogation proceedings. The Company may require from the Insured an assignment or other transfer of all rights of recovery against any party for loss to the extent of the Company's payment.

The Company will not acquire any rights of recovery that the Insured has expressly waived prior to a loss, nor will such waiver affect the Insured's rights under this Policy.

Any recovery from subrogation proceedings, less costs incurred by the Company in such proceedings, will be payable to the Insured in the proportion that the amount of:

- 1) any applicable deductible; and/or
 - 2) any provable uninsured loss,
- bears to the entire provable loss amount.

E. APPRAISAL

If the Insured and the Company fail to agree on the amount of loss, each will, on the written demand of either, select a competent and disinterested appraiser after:

- 1) the Insured has fully complied with all provisions of this Policy, including REQUIREMENTS IN CASE OF LOSS; and
- 2) the Company has received a signed and sworn proof of loss from the Insured.

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Each will notify the other of the appraiser selected within 20 days of such demand.

The appraisers will first select a competent and disinterested umpire. If the appraisers fail to agree upon an umpire within 30 days then, on the request of the Insured or the Company, the umpire will be selected by a judge of a court of record in the jurisdiction in which the appraisal is pending. The appraisers will then appraise the amount of loss, stating separately the Actual Cash Value and replacement cost value as of the date of loss and the amount of loss, for each item of physical loss or damage or if, for TIME ELEMENT loss, the amount of loss for each TIME ELEMENT coverage of this Policy.

If the appraisers fail to agree, they will submit their differences to the umpire. An award agreed to in writing by any two will determine the amount of loss.

The Insured and the Company will each:

- 1) pay its chosen appraiser; and
- 2) bear equally the other expenses of the appraisal and umpire.

A demand for APPRAISAL shall not relieve the Insured of its continuing obligation to comply with the terms and conditions of this Policy, including as provided under REQUIREMENTS IN CASE OF LOSS.

The Company will not be held to have waived any of its rights by any act relating to appraisal.

F. SUIT AGAINST THE COMPANY

No suit, action or proceeding for the recovery of any claim will be sustained in any court of law or equity unless:

- 1) the Insured has fully complied with all the provisions of this Policy; and
- 2) legal action is started within twelve months after inception of the loss.

If under the insurance laws of the jurisdiction in which the property is located, such twelve months' limitation is invalid, then any such legal action needs to be started within the shortest limit of time permitted by such laws.

5. SETTLEMENT OF CLAIMS

The amount of loss, except for ACCOUNTS RECEIVABLE coverage, for which the Company may be liable will be paid within 30 days after:

- A. proof of loss as described in this Policy is received by the Company; and
- B. when a resolution of the amount of loss is made either by:

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- 1) written agreement between the Insured and the Company; or
- 2) the filing with the Company of an award as provided in the APPRAISAL clause of this section.

6. COLLECTION FROM OTHERS

The Company will not be liable for any loss to the extent that the Insured has collected for such loss from others.

7. PARTIAL PAYMENT OF LOSS SETTLEMENT

In the event of a loss occurring which has been ascertained to be insured loss or damage under this Policy and determined by the Company's representatives to be in excess of the applicable Policy deductible, the Company will advance mutually agreed upon partial payment(s) on the insured loss or damage, subject to the Policy's provisions. To obtain said partial payments, the Insured will submit a signed and sworn Proof of Loss as described in this Policy, with adequate supporting documentation.



GENERAL PROVISIONS - SECTION E

1. ADDITIONAL INSURABLE INTERESTS/CERTIFICATES OF INSURANCE

Additional insured interests are automatically added to this Policy as their interest may appear when named as additional named insured, lender, mortgagee and/or loss payee in the Certificates of Insurance on a schedule on file with the Company. Such interests become effective on the date shown in the Certificate of Insurance and will not amend, extend or alter the terms, conditions, provisions and limits of this Policy.

2. CANCELLATION/NON-RENEWAL

This Policy may be:

- A. cancelled at any time at the request of the Insured by surrendering this Policy to the Company or by giving written notice to the Company stating when such cancellation will take effect; or
- B. cancelled by the Company by giving the Insured not less than:
 - 1) 90 days' written notice of cancellation; or
 - 2) 10 days' written notice of cancellation if the Insured fails to remit, when due, payment of premium for this Policy; or
- C. non-renewed by the Company by giving the Insured not less than 90 days' written notice of non-renewal.

Return of any unearned premium will be calculated on the customary short rate basis if the Insured cancels and on a pro-rata basis if the Company cancels this Policy. Return of any unearned premium will be made by the Company as soon as practicable.

3. INSPECTIONS

The Company, at all reasonable times, will be permitted, but will not have the duty, to inspect insured property.

The Company's:

- A. right to make inspections;
- B. making of inspections; or
- C. analysis, advice or inspection report,

will not constitute an undertaking, on behalf of or for the benefit of the Insured or others, to determine or warrant that the insured property is safe or healthful. This Company will have no liability to the Insured or any other person because of any inspection or failure to inspect.

When the Company is not providing jurisdictional inspections, the Owner/Operator has the responsibility to assure that jurisdictional inspections are performed as required, and to assure that required jurisdictional Operating Certificates are current for their pressure equipment.

4. PROVISIONS APPLICABLE TO SPECIFIC JURISDICTIONS

- A. If the provisions of this Policy conflict with the laws of any jurisdictions in which this Policy applies, and if certain provisions are required by law to be stated in this Policy, this Policy will be read so as to eliminate such conflict or deemed to include such provisions for Insured Locations within such jurisdictions.
- B. The Company will provide to the Insured copies of endorsements mandated for use by the laws of provinces in Canada. The endorsements may modify this Policy with respect to any insured property located in the province in which the endorsement applies.
- C. The Company will provide to the Insured copies of endorsements mandated for use by the laws of states in the United States of America. The endorsements may modify this Policy with respect to any insured property located in the state in which the endorsement applies.

5. LIBERALIZATION

If during the period that insurance is in force under this Policy, any filed rules or regulations affecting the same are revised by statute so as to broaden the insurance without additional premium charge, such extended or broadened insurance will inure to the benefit of the Insured within such jurisdiction, effective the date of the change specified in such statute.

6. MISREPRESENTATION AND FRAUD

This entire Policy will be void if, whether before or after a loss, an Insured has:

- A. willfully concealed or misrepresented any material fact or circumstance concerning this insurance, the subject thereof, any insurance claim, or the interest of an Insured.
- B. made any attempt to defraud the Company.
- C. made any false swearing.

7. LENDERS LOSS PAYEE AND MORTGAGEE INTERESTS AND OBLIGATIONS

- A. The Company will pay for loss to specified property insured under this Policy to each specified Lender Loss Payee (hereinafter referred to as Lender) as its interest may appear, and to each specified Mortgagee as its interest may appear, under all present or future mortgages upon such property, in order of precedence of the mortgages.
- B. The interest of the Lender or Mortgagee (as the case may be) in property insured under this Policy will not be invalidated by:
 - 1) any act or neglect of the debtor, mortgagor, or owner (as the case may be) of the property.

- 2) foreclosure, notice of sale, or similar proceedings with respect to the property.
- 3) change in the title or ownership of the property.
- 4) change to a more hazardous occupancy.

The Lender or Mortgagee will notify the Company of any known change in ownership, occupancy, or hazard and, within 10 days of written request by the Company, may pay the increased premium associated with such known change. If the Lender or Mortgagee fails to pay the increased premium, all coverage under this Policy will cease.

- C. If this Policy is cancelled at the request of the Insured or its agent, the coverage for the interest of the Lender or Mortgagee will terminate 10 days after the Company sends to the Lender or Mortgagee written notice of cancellation, unless:
- 1) sooner terminated by authorization, consent, approval, acceptance, or ratification of the Insured's action by the Lender or Mortgagee, or its agent.
 - 2) this Policy is replaced by the Insured, with a policy providing coverage for the interest of the Lender or Mortgagee, in which event coverage under this Policy with respect to such interest will terminate as of the effective date of the replacement policy, notwithstanding any other provision of this Policy.
- D. The Company may cancel this Policy and/or the interest of the Lender or Mortgagee under this Policy, by giving the Lender or Mortgagee written notice 90 days prior to the effective date of cancellation, if cancellation is for any reason other than non-payment. If the debtor, mortgagor, or owner has failed to pay any premium due under this Policy, the Company may cancel this Policy for such non-payment, but will give the Lender or Mortgagee written notice 10 days prior to the effective date of cancellation. If the Lender or Mortgagee fails to pay the premium due by the specified cancellation date, all coverage under this Policy will cease.
- E. The Company has the right to invoke this Policy's SUSPENSION clause. The suspension of insurance will apply to the interest of the Lender or Mortgagee in any machine, vessel, or part of any machine or vessel, subject to the suspension. The Company will provide the Lender or Mortgagee at the last known address a copy of the suspension notice.
- F. If the Company pays the Lender or Mortgagee for any loss, and denies payment to the debtor, mortgagor or owner, the Company will, to the extent of the payment made to the Lender or Mortgagee be subrogated to the rights of the Lender or Mortgagee under all securities held as collateral to the debt or mortgage. No subrogation will impair the right of the Lender or Mortgagee to sue or recover the full amount of its claim. At its option, the Company may pay to the Lender or Mortgagee the whole principal due on the debt or mortgage plus any accrued interest. In this event, all rights and securities will be assigned and transferred from the Lender or Mortgagee to the Company, and the remaining debt or mortgage will be paid to the Company.

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- G. If the Insured fails to render proof of loss, the Lender or Mortgagee, upon notice of the Insured's failure to do so, will render proof of loss within 60 days of notice and will be subject to the provisions of this Policy relating to APPRAISAL, SETTLEMENT OF CLAIMS, and SUIT AGAINST THE COMPANY.
- H. Other provisions relating to the interests and obligations of the Lender or Mortgagee may be added to this Policy by agreement in writing.

8. OTHER INSURANCE

- A. If there is any other insurance that would apply in the absence of this Policy, this Policy will apply only after such insurance whether collectible or not.
- B. In no event will this Policy apply as contributing insurance.
- C. The Insured is permitted to have other insurance over any limits or sublimits of liability specified elsewhere in this Policy without prejudice to this Policy. The existence of any such insurance will not reduce any limit or sublimit of liability in this Policy. Any other insurance that would have provided primary coverage in the absence of this Policy will not be considered excess.
- D. The Insured is permitted to have other insurance for all, or any part, of any deductible in this Policy. The existence of such other insurance will not prejudice recovery under this Policy. If the limits of liability of such other insurance are greater than this Policy's applicable deductible, this Policy's insurance will apply only after such other insurance has been exhausted.
- E. In the event this Policy is deemed to contribute with other insurance, the limit of liability applicable at each Location, for purposes of such contribution with other insurers, will be the latest amount described in this Policy or the latest Location value on file with the Company.
- F. When this Policy includes property in more than one jurisdiction, separate policies underlying this Policy may be issued by the Company in compliance with jurisdictional requirements. Such underlying policies will not be considered as additional insurance, but as duplicate insurance only.

9. POLICY MODIFICATION

This Policy contains all of the agreements between the Insured and the Company concerning this insurance. The Insured and the Company may request changes to this Policy. This Policy can be changed only by endorsements issued by the Company and made a part of this Policy.

Notice to any agent or knowledge possessed by any agent or by any other person will not:

- A. create a waiver, or change any part of this Policy; or
- B. prevent the Company from asserting any rights under the provisions of this Policy.

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10. REDUCTION BY LOSS

Claims paid under this Policy will not reduce its' limit of liability, except claims paid will reduce any Policy Year Aggregate Limit of Liability.

11. SUSPENSION

On discovery of a dangerous condition, the Company may immediately suspend this insurance on any machine, vessel or part thereof by giving written notice to the Insured. The suspended insurance may be reinstated by the Company. Any unearned premium resulting from such suspension will be returned by the Company.

12. TITLES

The titles in this Policy are only for reference. The titles do not in any way affect the provisions of this Policy.



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APPENDIX A

SCHEDULE OF LOCATIONS:

<u>Location No.</u>	<u>Index No.</u>	<u>Location Description</u>
1-1	079301.53	5757 Wayne Newton Blvd. Las Vegas, NV 89119 "McCarran International Airport"
1-2	174.35	5051 Paradise Road and 500 Bell Road Las Vegas, NV 89119 "Engineering Facility Warehouse"
1-3	79301.53	2000 E. Patrick Lane; 1769 E. Russell Road and 6020 Spencer Street Las Vegas, NV 89119 "Airline Ground Support UMC Quick Care Industrial Park"
1-4	79450.06	2772 Rancho Drive North Las Vegas, NV "North Las Vegas Airport"
1-5	79312.43	105, 115, 125 E. Reno Ave., Las Vegas, NV 89119 "Leased Retail Space"
1-6	79318.70	6330, 6380, 6400 S. Eastern Ave. Las Vegas, NV 89119 "Office / Retail / Warehouse"
1-7	79318.70	2450, 2470, 2475 Chandler Ave. Las Vegas, NV 89120 "Office / Warehouse / Retail"
1-8	79318.69	6075 S. Eastern Ave.; 2200-2350 E. Patrick Lane, and 6080 Burnham Ave. Las Vegas, NV 89119 "Office / Warehouse / Retail"



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APPENDIX A

SCHEDULE OF LOCATIONS:

<u>Location No.</u>	<u>Index No.</u>	<u>Location Description</u>
1-9	79309.93	500 E. Hwy 146 and 1400 Executive Airport Dr. Henderson, NV 89012 "Henderson Executive Airport"
1-10	79312.43	241 E. Reno Ave. Las Vegas, NV 89119 "B1 Airline Terminal"
1-11	174.34	1788 E. Russell Road Las Vegas, NV 89119 "Day Care Center"
1-12	178.10	1110 Airport Road Overton, NV 89040 "Overton Perkins Field"
1-13	178.11	23600 Las Vegas Blvd. So. Jean, NV "Jean Sport Aviation Center"
1-14	Index TBA	Las Vegas Blvd South Las Vegas, NV "Serene Mobile Home Park"
1-15	174.34	Kelly Lane & Russell Road Las Vegas, NV
2	99999.99	Miscellaneous Scheduled Locations Various – Las Vegas, NV (Addresses per Schedule on file) "Miscellaneous Residences"

EXHIBIT “B”

LAS VEGAS



McCARRAN INTERNATIONAL AIRPORT

February 22, 2002

Jeffrey Casillas
Operations Vice President/
Los Angeles Operations Claims Manager
Factory Mutual Insurance Company
21860 Burbank Blvd., Suite 300
Woodland Hills, CA 91367

Certified Mail 7000 1670 0010 5029 2420
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Department of Aviation

RANDALL H. WALKER
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E-MAIL: webmaster2@mccarran.com

RECEIVED
McCARRAN INT'L AIRPORT

FEB 27 2002

ACCOUNTING OFFICE

2812

Re: Policy No.: UA864
Claim Associated With September 11, 2001 Terrorist Attacks

Dear Mr. Casillas:

I enjoyed meeting with you on Thursday, February 7, 2002 regarding Clark County Department of Aviation's ("Clark County") claim under FM Global policy No. UA864 (1 October 2000 to 1 October 2003) (the "Policy") for loss caused by the terrorist attacks of September 11, 2001. During our meeting, you requested written articulation of Clark County's position for coverage under the Policy.

As we discussed, there are a number of policy provisions that support coverage for Clark County's loss. Notably, as we advised, we rely primarily upon the coverage provided under the Policy's Protection and Preservation of Property section, Section B. 3. Q., page 15; Contingent Time Element Extension, Section C. 3. A., page 30; and Ingress/Egress Time Element Extension, Section C. 3. C., page 31. Because, to us, the Ingress/Egress Extension so clearly provides coverage on such a broad basis, the discussion in this letter will, for now, focus only on that Extension, while deferring a broader discussion of the other two provisions until a later time. I want to emphasize, however, as we did during our February 7 meeting, that each of the three provisions, on its face and according to its clear language, is applicable to and provides broad coverage protection for Clark County's loss resulting from and following the tragic events of September 11. We are prepared to discuss all of these provisions with you further and encourage a dialogue as a result of this letter and our February 7 meeting.

The Ingress/Egress provision is found in Section C. 3. C. of the Policy, at page 31 and clearly provides an express extension to the Policy's standard Time Element Coverages:

C. INGRESS/EGRESS

This Policy covers the Actual Loss Sustained and EXTRA EXPENSE incurred by the Insured due to the necessary interruption of the Insured's business due to the prevention of ingress to or egress from an Insured Location, whether or not the premises or property of the Insured is damaged, provided that such prevention is a direct result of physical damage of the type insured by this Policy, to the kind of property not excluded by this Policy. (Policy, p. 31)



Clark County Board of Commissioners

Dario Herrera, Chairman • Myrna Williams, Vice Chair

Yvonne Atkinson Gates • Erin Kenny • Mary J. Kincaid-Chauncey • Chip Maxfield • Bruce L. Woodbury

Your Insured, Clark County, sustained the very type of loss and extra expense envisioned by this Extension when, as a direct result of the September 11, 2001 terrorist attacks on the World Trade Center and the Pentagon, its business at McCarran International Airport and other Insured Locations was shut down. Ingress to/Egress from those Locations was clearly prevented, in accordance with the coverage provisions, and significant loss was sustained as a consequence.

For ease of analysis, the Ingress/Egress Extension can be broken down into the following six components:

- (1) "Actual Loss Sustained and EXTRA EXPENSE"
- (2) "due to the necessary interruption of the Insured's business"
- (3) "due to the prevention of ingress to or egress from an Insured Location"
- (4) "whether or not the premises or property of the Insured is damaged"
- (5) "provided that such prevention is a direct result of physical damage of the type insured by this Policy"
- (6) "to the kind of property not excluded by this Policy."

The following simple, step-by-step analysis of these six components leads to the inescapable conclusion that Clark County has suffered a significant covered loss and is entitled to Policy benefits.

(1) Actual Loss Sustained and Extra Expense

By using the phrase "Actual Loss Sustained," the Ingress/Egress Extension unambiguously and expressly covers Clark County against losses in the form of reduced revenue when Clark County is "wholly or partially prevented from . . . continuing business operations or services." (Policy, p. 26.) Such a loss was indisputably "sustained" by Clark County as a result of the closure of McCarran International Airport and other Clark County locations following the September 11 terrorist attacks.

Likewise, "EXTRA EXPENSE", such as that incurred by Clark County to resume and continue operations "as nearly normal as practicable" following September 11 is also unambiguously and expressly covered. (Policy, p. 27.) And the Policy's Extended Period of Liability section extends coverage for reduced revenue ("reduction in sales") and Extra Expense "for such additional length of time as would be required . . . to restore the Insured's business to the condition that would have existed had no loss occurred." (Policy, p. 30.)

Thus, the first coverage component under Ingress/Egress is clearly satisfied by Clark County's pending claim.

(2) necessary interruption of the Insured's business

Clark County's "business" was indisputably "interrupted" following and as a direct result of the September 11 attacks, the "necessity" of that interruption cannot seriously or in good faith be questioned. Thus, the second coverage component under Ingress/Egress has also unquestionably been satisfied by the pending claim.

(3) prevention of ingress to or egress from an Insured Location

Prevention of ingress to and egress from Insured Locations also occurred following and as a direct result of the September 11 attacks. As you know, and as you acknowledged in your November 27, 2001 letter

to Randy Walker, all air traffic was grounded by FAA order shortly following the attacks and as a direct result of them. Consequently, Clark County airports, specifically including McCarran, were shut down and ingress to and egress from them was indisputably "prevented." Again, we do not believe there can be a serious or good faith questioning of this "prevention."

Contrary to suggestions in your correspondence and at our meeting, the plain language of the Ingress/Egress coverage does not require "physical" prevention. It simply requires "prevention" resulting from "physical damage of the type insured." The Policy is replete with use of the word "physical" when such a requirement is intended. Its absence here in modifying (or not modifying) "prevention" is significant.

Your November 27, 2001 letter to Mr. Walker states the irrelevant, but nevertheless mistaken, belief that "the nation's airports were never 'closed'" following September 11. In fact, our airports were closed. In addition to the FAA's grounding of all air traffic, government authorities closed McCarran to everyone but certain airport employees.

Moreover, the surprising significance you attempt to place on this mistaken belief of "partial" closure is also unsupportable. First, the undefined term "prevention" cannot be read to require an absolute or total stoppage of all ingress or egress. See *Fountain Powerboat Indus., Inc. v. Reliance Ins. Co.*, 119 F. Supp. 2d 552 (E.D.N.C.) (holding that a policy providing coverage when ingress or egress was "prevented" covered revenue lost when usual routes to the insured location were obstructed making ingress and egress more difficult). Beyond that, the Policy expressly provides coverage for loss when Clark County is "wholly or partially prevented" from conducting its business. (Policy, p. 26.) Any interpretation to the contrary would unreasonably eviscerate the broad coverage "extension" provided by the Ingress/Egress provision and result in a rewriting of the otherwise clear policy language.

(4) whether or not the premises or property of the Insured is damaged

An important component of the broad coverage provided by the Ingress/Egress Extension is that no damage to the "premises or property of the Insured" is necessary for there to be coverage under the Extension's express wording. Thus, the statement in your November 27, 2001 letter that "[n]o insured property suffered physical loss or damage" is irrelevant to the Ingress/Egress coverage. Again, you seek to rewrite your policy "after the fact" and after it is clear that coverage is provided under express Policy terms as actually written. Physical loss or damage to insured property is expressly not necessary for Ingress/Egress coverage to apply. (Policy, p. 31.)

Your attempt to impose the limitations of section C.4.A.8. onto the Ingress/Egress Extension is misplaced and contrary to the language of both those sections. Specifically, during our meeting and in your November 27 letter, you suggest that there can be no coverage to Clark County's pending claims because "[a]ccess to insured premises was not prohibited or impaired by governmental order because of existing physical loss or damage at or near proximity of the insured premises." The separate coverage provision you reference (C.4.A.8, at page 35) has no application to the Ingress/Egress Extension by the express wording of Section C.4.A. itself. The provisions of Section C.4.A. – including Section C.4.A.8. – unambiguously and expressly do not apply "if otherwise provided under the TIME ELEMENT COVERAGE EXTENSIONS." (Policy, p. 33.) The Ingress/Egress coverage is one of these "TIME ELEMENT EXTENSIONS" and "provides otherwise" by providing coverage "whether or not the premises or property of the Insured is damaged" and subject to the "number of consecutive days shown in the Limits of Liability clause . . ." (Policy, p. 31). Accordingly, the circumstances and limitations of Section C.4.A.8. have no application to Clark County's claim by express Policy terms.

Moreover, the Policy cannot be rewritten after the fact to turn the relatively obscure provisions of Section C.4.A.8. into an exclusionary provision or a limitation on the broad Ingress/Egress Extension. Exclusions in a policy must be clear and clearly stated. Thus, “[a]ny attempt to restrict insurance coverage must be done clearly and explicitly.” *Farmers Ins. Exchange v. Young*, 108 Nev. 328, 330 (1992). Similarly, the Policy cannot be interpreted to limit or nullify the broad promise of coverage under the Ingress/Egress Extension by imposing the contrary or limiting provisions of Section C.4.A.8. (which, again, does not even apply to the Ingress/Egress Extension by the express terms of C.4.A.) See *National Union Fire Ins. Co. of the State of PA, Inc. v. Reno’s Executive Air, Inc.*, 100 Nev. 360, 366 (1984)(“When a policy has been issued which purportedly provides coverage but whose exclusionary provisions as interpreted by the insurer would narrow the coverage to defeat the purpose of the insurance, the policy must be construed against the insurer.”).

(5) provided that such prevention is the direct result of physical damage of the type insured by this Policy

As all Americans painfully know, America was thrown into a terrible turmoil after the 9/11 tragedy. And there can be no dispute that the FAA grounding of air traffic nation-wide was the “direct result” of the tragic events and physical devastation to the World Trade Center and the Pentagon. The shutdown of Clark County’s airports was also, unquestionably, the “direct result” of that “physical damage” to the World Trade Center and the Pentagon.

You have not disputed – indeed, you cannot honestly and in good faith dispute – the fact that the damage to the World Trade Center and the Pentagon are “physical damage of the type insured by this Policy.” In our conversations, however, you have exhibited a misconception of the meaning of the phrase “direct result.” Contrary to your apparent misinterpretation, “direct,” unlike “immediate,” does not refer to the last cause in a chain of events. The Policy uses the word “immediate” rather than “direct” to impose the kind of “next in line” requirement you seem to have in mind. For example, the Service Interruption Time Element Extension requires an accidental occurrence that “immediately prevents” delivery of services. No such “immediacy” link is imposed in the Ingress/Egress Extension.

By contrast, the Ingress/Egress Extension speaks of a “direct result” that requires only that the damage to the World Trade Center and the Pentagon be the “efficient proximate cause” of the prevention of ingress or egress. See *Chlor Alkali Co., Inc. v. National Union Fire Ins. Co. of Pittsburgh, PA*, 863 F. Supp. 1226 (D. Nev. 1994)(explaining that “[t]he efficient proximate cause is not necessarily the last in a chain of events” and that “[t]he efficient proximate cause doctrine . . . looks to the quality of the links in the chain to determine which is the predominant cause.”). The efficient proximate cause is “the one that sets others in motion.” *Id.* Clark County’s losses were clearly “set in motion” by the September 11 attacks. In other words, Clark County’s losses were “directly caused” by the physical damage to the World Trade Center and the Pentagon. Thus, again, this coverage component of the Ingress/Egress Extension has clearly been satisfied by Clark County’s pending claim.

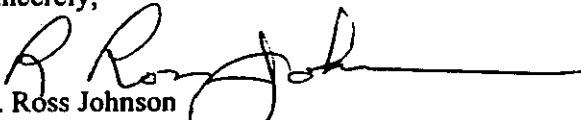
(6) to the kind of property not excluded by this Policy

Both the World Trade Center and the Pentagon also are unquestionably “the kind of property not excluded” under the Policy – namely, they are/were “buildings” which are expressly covered by the Policy. (Policy, p. 7.) This sixth and final coverage requirement is clearly satisfied.

* * * * *

I hope that the foregoing discussion has adequately explained Clark County's coverage position under, at least, the Ingress/Egress Extension and cleared away any confusion that may have limited your understanding of the coverage provided for Clark County's losses. We are, of course, prepared to discuss this matter further with you and would welcome any comments or response you may have. In the meantime, we will proceed to finalize our claim submission.

Sincerely,



R. Ross Johnson
Assistant Director of Aviation, Finance

cc: Randall H. Walker
Rosemary Vassiliadis
Marc Traasdahl

Mr. Lloyd W. Cutler, CPCU
KELLOG, CUTLER, YENCHEK, LADUKE, HOLMES INSURANCE SERVICES
330 E. Charleston Blvd.
Las Vegas, NV 89104

Mr. Thomas R. Mury
DELOITTE & TOUCHE
Dispute Consulting Services
695 Town Center Drive, Suite 1200
Costa Mesa, CA 92626-7188

Mr. Rod Fisher
Vice President, Operations Manager
FM GLOBAL
21860 Burbank Boulevard, Suite 300
Woodland Hills, CA 91367

Mr. Gerry L. Alonso, RPA
Vice President, Western Division Claims Manager
FM GLOBAL
Granite Park One, 5800 Granite Parkway, Suite 600
Plano, TX 75024

Mr. David W. Steuber

Partner

HOWREY, SIMON, ARNOLD & WHITE ATTORNEYS AT LAW

550 South Hope Street, Suite 1400

Los Angeles, CA 90071-2627

EXHIBIT “C”

LAS VEGAS



McCARRAN INTERNATIONAL AIRPORT

March 22, 2002

Jeffrey Casillas
Operations Vice President/
Los Angeles Operations Claims Manager
Factory Mutual Insurance Company
21860 Burbank Blvd., Suite 300
Woodland Hills, CA 91367

Department of Aviation

RANDALL H. WALKER

DIRECTOR

ROSEMARY A. VASSILIADIS

DEPUTY DIRECTOR

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RECEIVED
McCARRAN INT'L AIRPORT

MAR 25 2002

ACCOUNTING OFFICE 2862

Re: Policy No.: UA864
Sworn Statement in Proof of Loss Associated With September 11, 2001 Terrorist Attacks

Dear Mr. Casillas:

Enclosed with this letter is the Clark County Department of Aviation's completed "Sworn Statement in Proof of Loss" that represents the submission of a claim for losses sustained by the Clark County Department of Aviation due to the interruption of business caused by the tragic events of September 11, 2001.

Also enclosed with this letter is a copy of the letter I sent dated February 22, 2002 outlining the Clark County Department of Aviation's coverage position of FM Global's policy related to this loss. I have also enclosed several schedules that outline our calculation of the lost revenue and additional expense that resulted from this interruption of business.

If you have any questions related to these documents, please call Marc Traasdahl at 702-261-5113. Thank you for your cooperation in this matter.

Sincerely,

R. Ross Johnson
Assistant Director of Aviation, Finance

RRJ:mz

Enclosure



Clark County Board of Commissioners

Dario Herrera, Chairman • Myrna Williams, Vice Chair
Yvonne Atkinson Gates • Erin Kenny • Mary J. Kincaid-Chauncey • Chip Maxfield • Bruce L. Woodbury

Jeffrey Casillas
March 22, 2002
Page Two

cc: Randall H. Walker
Rosemary Vassiliadis
Marc Traasdahl

Mr. Lloyd W. Cutler, CPCU
KELLOG, CUTLER, YENCHEK, LADUKE, HOLMES NSURANCE SERVICES
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Las Vegas, NV 89104

Mr. Thomas R. Mury
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Granite Park One, 5800 Granite Parkway, Suite 600
Plano, TX 75024

Mr. David W. Steuber
Partner
HOWREY, SIMON, ARNOLD & WHITE ATTORNEYS AT LAW
550 South Hope Street, Suite 1400
Los Angeles, CA 90071-2627

SWORN STATEMENT IN PROOF OF LOSS

Claim no. 1

\$1,567,393,000

AMOUNT OF POLICY AT TIME OF LOSS

1 October, 2000

DATE ISSUED

1 October, 2001

DATE EXPIRES

UA864

POLICY NO.

Kellogg, Cutler, Yenchek, La Duke, Holmes Ins. Services

AGENCY AT

Lloyd W. Cutler, CPCU

AGENT

To the Factory Mutual Insurance Company of Johnston, Rhode Island. At time of loss, by the above indicated policy of insurance you insured The Clark County Department of Aviation and other entities as per the Named Insured provision of the Policy against loss by Interruption of the Insured's business to the property described under Schedule "A", according to the term and conditions of the said policy and all forms, endorsement, transfers and assignments attached thereto.

1. **Time and Origin:** A Interruption of the Insured's business loss occurred about the hour of 08:00 o'clock AM., on the 11th day of September, 2001. The cause and origin of the said loss were: The damage to, destruction of, and collapse of buildings at the World Trade Center in New York City and the Pentagon in Washington, D.C. and the resulting order of federal authorities closing the national airspace.

2. **Occupancy:** The building described, or containing the property described, was occupied at the time of the loss as follows, and for no other purpose whatever: NA

3. **Title and Interest:** At the time of the loss the interest of your insured in the property described therein was NA. No other person or persons had any interest therein or incumbrance thereon, except: NA.

4. **Changes:** Since the said policy was issued there has been no assignment thereof, or change of interest, use, occupancy, possession, location or exposure of the property described, except: NONE

5. **Total Insurance:** The total amount of insurance upon the property described by this policy was, at the time of the loss \$1,567,393,000, as more particularly specified in the apportionment attached under Schedule "C", besides which there was no policy or other contract of insurance, written or oral, valid or invalid.

6. **The Actual Cash Value** of said property at the time of loss was NA

7. **The Whole Loss and Damage** was \$6,530,570

8. **The Amount Claimed** under the above numbered policy is \$6,530,570

The said loss did not originate by any act, design or procurement on the part of your insured, or this affiant; nothing has been done by or with the privity or consent of your insured or this affiant, to violate the conditions of the policy, or render it void; no articles are mentioned herein or in annexed schedules but such as were destroyed or damaged at the time of said loss; no property saved has in any manner been concealed, and no attempt to deceive the said company, as to the extent of said loss, has in any manner been made. Any other information that may be required will be furnished and considered a part of this proof.

The furnishing of this blank or the preparation of proofs by a representative of the above insurance company is not a waiver of any of its rights.

Clark County Department of Aviation

State of NEVADA

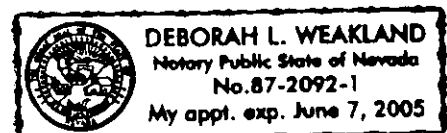
by: _____

County of CLARK

B. Rongjoh Insured

Subscribed and sworn to before me this 22ND day of MARCH, 2002Deborah L. Weakland

Notary Public



LAS VEGAS



McCARRAN INTERNATIONAL AIRPORT

February 22, 2002

Jeffrey Casillas
Operations Vice President/
Los Angeles Operations Claims Manager
Factory Mutual Insurance Company
21860 Burbank Blvd., Suite 300
Woodland Hills, CA 91367

Certified Mail 7000 1670 0010 5029 2420
Return Receipt Requested

Department of Aviation

RANDALL H. WALKER

DIRECTOR

ROSEMARY A. VASSILIADIS

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FEB 27 2002

ACCOUNTING OFFICE

2812

Re: Policy No.: UA864
Claim Associated With September 11, 2001 Terrorist Attacks

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As we discussed, there are a number of policy provisions that support coverage for Clark County's loss. Notably, as we advised, we rely primarily upon the coverage provided under the Policy's Protection and Preservation of Property section, Section B. 3. Q., page 15; Contingent Time Element Extension, Section C. 3. A., page 30; and Ingress/Egress Time Element Extension, Section C. 3. C., page 31. Because, to us, the Ingress/Egress Extension so clearly provides coverage on such a broad basis, the discussion in this letter will, for now, focus only on that Extension, while deferring a broader discussion of the other two provisions until a later time. I want to emphasize, however, as we did during our February 7 meeting, that each of the three provisions, on its face and according to its clear language, is applicable to and provides broad coverage protection for Clark County's loss resulting from and following the tragic events of September 11. We are prepared to discuss all of these provisions with you further and encourage a dialogue as a result of this letter and our February 7 meeting.

The Ingress/Egress provision is found in Section C. 3. C. of the Policy, at page 31 and clearly provides an express extension to the Policy's standard Time Element Coverages:

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The following simple, step-by-step analysis of these six components leads to the inescapable conclusion that Clark County has suffered a significant covered loss and is entitled to Policy benefits.

(1) Actual Loss Sustained and Extra Expense

By using the phrase "Actual Loss Sustained," the Ingress/Egress Extension unambiguously and expressly covers Clark County against losses in the form of reduced revenue when Clark County is "wholly or partially prevented from . . . continuing business operations or services." (Policy, p. 26.) Such a loss was indisputably "sustained" by Clark County as a result of the closure of McCarran International Airport and other Clark County locations following the September 11 terrorist attacks.

Likewise, "EXTRA EXPENSE", such as that incurred by Clark County to resume and continue operations "as nearly normal as practicable" following September 11 is also unambiguously and expressly covered. (Policy, p. 27.) And the Policy's Extended Period of Liability section extends coverage for reduced revenue ("reduction in sales") and Extra Expense "for such additional length of time as would be required . . . to restore the Insured's business to the condition that would have existed had no loss occurred." (Policy, p. 30.)

Thus, the first coverage component under Ingress/Egress is clearly satisfied by Clark County's pending claim.

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Clark County's "business" was indisputably "interrupted" following and as a direct result of the September 11 attacks, the "necessity" of that interruption cannot seriously or in good faith be questioned. Thus, the second coverage component under Ingress/Egress has also unquestionably been satisfied by the pending claim.

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to Randy Walker, all air traffic was grounded by FAA order shortly following the attacks and as a direct result of them. Consequently, Clark County airports, specifically including McCarran, were shut down and ingress to and egress from them was indisputably "prevented." Again, we do not believe there can be a serious or good faith questioning of this "prevention."

Contrary to suggestions in your correspondence and at our meeting, the plain language of the Ingress/Egress coverage does not require "physical" prevention. It simply requires "prevention" resulting from "physical damage of the type insured." The Policy is replete with use of the word "physical" when such a requirement is intended. Its absence here in modifying (or not modifying) "prevention" is significant.

Your November 27, 2001 letter to Mr. Walker states the irrelevant, but nevertheless mistaken, belief that "the nation's airports were never 'closed'" following September 11. In fact, our airports were closed. In addition to the FAA's grounding of all air traffic, government authorities closed McCarran to everyone but certain airport employees.

Moreover, the surprising significance you attempt to place on this mistaken belief of "partial" closure is also unsupportable. First, the undefined term "prevention" cannot be read to require an absolute or total stoppage of all ingress or egress. See *Fountain Powerboat Indus., Inc. v. Reliance Ins. Co.*, 119 F. Supp. 2d 552 (E.D.N.C.) (holding that a policy providing coverage when ingress or egress was "prevented" covered revenue lost when usual routes to the insured location were obstructed making ingress and egress more difficult). Beyond that, the Policy expressly provides coverage for loss when Clark County is "wholly or partially prevented" from conducting its business. (Policy, p. 26.) Any interpretation to the contrary would unreasonably eviscerate the broad coverage "extension" provided by the Ingress/Egress provision and result in a rewriting of the otherwise clear policy language.

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As all Americans painfully know, America was thrown into a terrible turmoil after the 9/11 tragedy. And there can be no dispute that the FAA grounding of air traffic nation-wide was the "direct result" of the tragic events and physical devastation to the World Trade Center and the Pentagon. The shutdown of Clark County's airports was also, unquestionably, the "direct result" of that "physical damage" to the World Trade Center and the Pentagon.

You have not disputed – indeed, you cannot honestly and in good faith dispute – the fact that the damage to the World Trade Center and the Pentagon are "physical damage of the type insured by this Policy." In our conversations, however, you have exhibited a misconception of the meaning of the phrase "direct result." Contrary to your apparent misinterpretation, "direct," unlike "immediate," does not refer to the last cause in a chain of events. The Policy uses the word "immediate" rather than "direct" to impose the kind of "next in line" requirement you seem to have in mind. For example, the Service Interruption Time Element Extension requires an accidental occurrence that "immediately prevents" delivery of services. No such "immediacy" link is imposed in the Ingress/Egress Extension.

By contrast, the Ingress/Egress Extension speaks of a "direct result" that requires only that the damage to the World Trade Center and the Pentagon be the "efficient proximate cause" of the prevention of ingress or egress. See *Chlor Alkali Co., Inc. v. National Union Fire Ins. Co. of Pittsburgh, PA*, 863 F. Supp. 1226 (D. Nev. 1994) (explaining that "[t]he efficient proximate cause is not necessarily the last in a chain of events" and that "[t]he efficient proximate cause doctrine . . . looks to the quality of the links in the chain to determine which is the predominant cause."). The efficient proximate cause is "the one that sets others in motion." *Id.* Clark County's losses were clearly "set in motion" by the September 11 attacks. In other words, Clark County's losses were "directly caused" by the physical damage to the World Trade Center and the Pentagon. Thus, again, this coverage component of the Ingress/Egress Extension has clearly been satisfied by Clark County's pending claim.

(6) to the kind of property not excluded by this Policy

Both the World Trade Center and the Pentagon also are unquestionably "the kind of property not excluded" under the Policy – namely, they are/were "buildings" which are expressly covered by the Policy. (Policy, p. 7.) This sixth and final coverage requirement is clearly satisfied.

* * * * *

I hope that the foregoing discussion has adequately explained Clark County's coverage position under, at least, the Ingress/Egress Extension and cleared away any confusion that may have limited your understanding of the coverage provided for Clark County's losses. We are, of course, prepared to discuss this matter further with you and would welcome any comments or response you may have. In the meantime, we will proceed to finalize our claim submission.

Sincerely,


R. Ross Johnson
Assistant Director of Aviation, Finance

cc: Randall H. Walker
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Clark County Department of Aviation
 McCarran International Airport
 Business Interruption Loss due to September 11, 2001

	2000	Projection 2001	Actual 2001	Total	Loss of Revenue	
					To Nov 12	60 Days
Landing Fees						
Scheduled Carriers						
			(6 month 1.12%)			
September	2,223,322	2,248,223	1,910,305	337,918		337,918
October	2,326,390	2,352,446	2,163,701	188,745		188,745
November	2,234,012	2,259,033	2,018,476	240,557	96,223	96,223
Charter Carriers						
			(6 month -16.84%)			
September	225,247	187,315	191,983	(4,668)		(4,668)
October	298,867	248,538	183,737	64,801		64,801
November	250,289	208,140	167,095	41,045	16,418	16,418
Mail Charters						
			(6 month -7.22%)			
September	47,705	44,261	42,685	1,576		1,576
October	47,928	44,468	54,140	(9,672)		(9,672)
November	48,644	45,132	54,693	(9,561)	(3,824)	(3,824)
Aircraft Service Fees						
Fuel Flowage Fees						
			(6 month -5.84%)			
September	191,267	180,097	164,154	15,943		15,943
October	191,373	180,197	137,907	42,290		42,290
November	199,577	187,922	150,170	37,752	15,101	15,101
Ground Handling						
			(6 month Average)			
September	124,769	138,347	118,281	20,066		20,066
October	144,218	138,347	122,058	16,289		16,289
November	135,033	138,347	100,612	37,735	15,094	15,094
Rental Fees						
Private Tenants						
			(3 month 32.37%)			
September	88,476	117,116	89,016	28,100		28,100
October	96,212	127,356	96,770	30,586		30,586
November	99,492	131,698	100,545	31,153	12,461	12,461
Notes: ATM fees dependant upon px traffic and First USA Credit could not access secured area for 2 months @ 10,000 e.						
Usage Fees						
Per Enplanement(Ticket Counter)						
			(6 month 18.06%)			
September	63,773	75,290	49,873	25,417		25,417
October	73,946	87,301	70,012	17,289		17,289
November	65,897	77,798	58,144	19,654	7,862	7,862
CIT Per Pax Fee						
			(6 month -10.01%)			
September	252,617	227,103	150,081	77,022		77,022
October	306,873	275,879	162,547	113,332		113,332
November	286,358	257,436	155,278	102,158	40,863	40,863

Clark County Department of Aviation
 McCarran International Airport
 Business Interruption Loss due to September 11, 2001

	2000	Projection 2001	Actual 2001	Total	Loss of Revenue To Nov 12	60 Days
Passenger Facility Charge (PFC)						
			(6 month 5.03%)			
September	3,658,561	3,842,587	2,599,760	1,242,827		1,242,827
October	3,861,791	4,056,039	3,211,657	844,382		844,382
November	3,392,182	3,562,809	2,903,994	658,815	263,526	263,526
Concession Fees						
Gaming						
			(6 month -0.36%)			
September	2,244,686	2,236,605	2,081,565	155,040		155,040
October	2,837,747	2,827,531	3,134,194	(306,663)		(306,663)
November	2,578,329	2,569,047	2,442,877	126,170	50,468	50,468
Transportation Concessions						
Busses						
			(6 month 27.49%)			
September	28,583	36,440	18,109	18,331		18,331
October	38,871	49,557	20,895	28,662		28,662
November	36,147	46,084	16,856	29,228	11,691	11,691
Limousines						
			(2 month 55.72%)			
September	241,231	375,645	327,026	48,619		48,619
October	260,183	405,157	373,119	32,038		32,038
November	221,095	344,289	368,099	(23,810)	(9,524)	(9,524)
Rent Cars - On Airport						
			(6 month 0.77%)			
September	1,272,910	1,282,711	1,149,742	132,969		132,969
October	1,449,287	1,460,447	1,292,709	167,738		167,738
November	1,359,009	1,369,473	1,156,171	213,302	85,321	85,321
Rent Cars - Off Airport						
			(6 month -8.61%)			
September	264,485	241,713	205,148	36,565		36,565
October	277,649	253,743	225,804	27,939		27,939
November	232,984	212,924	189,154	23,770	9,508	9,508
Taxis						
			(6 month 5.65%)			
September	206,650	218,326	150,150	68,176		68,176
October	253,750	268,087	259,800	8,287		8,287
November	216,950	229,208	180,000	49,208	19,683	19,683
Sales Concessions						
Advertising						
			(6 month 2.37%)			
September	825,347	844,908	792,472	52,436		52,436
October	846,189	866,244	766,953	99,291		99,291
November	860,526	880,920	798,701	82,219	32,888	32,888
Bars						
			(6 month -3.62%)			
September	128,702	124,043	99,553	24,490		24,490
October	157,733	152,023	151,319	704		704
November	141,110	136,002	134,189	1,813	725	725

Clark County Department of Aviation
 McCarran International Airport
 Business Interruption Loss due to September 11, 2001

	2000	Projection 2001	Actual 2001	Total	Loss of Revenue To Nov 12	60 Days
Restaurants			(6 month 9.13%)			
September	269,000	293,560	215,477	78,083		78,083
October	196,188	214,100	327,779	(113,679)		(113,679)
November	290,467	316,987	290,378	26,609	10,644	10,644
Catering			(6 month 7.62%)			
September	260,217	280,046	230,466	49,580		49,580
October	253,202	272,496	189,440	83,056		83,056
November	242,168	260,621	160,165	100,456	40,182	40,182
Clothing Shops			(6 month 11.09%)			
September	58,560	65,054	45,288	19,766		19,766
October	72,666	80,725	63,638	17,087		17,087
November	60,153	66,824	55,738	11,086	4,434	4,434
Gift Shops			(6 month 1.36%)			
September	481,475	488,023	365,291	122,732		122,732
October	569,868	577,618	546,673	30,945		30,945
November	484,356	490,943	403,686	87,257	34,903	34,903
Lockers			(6 month -3.78%)			
September	4,424	4,257	-	4,257		4,257
October	2,534	2,438	-	2,438		2,438
November	3,984	3,833	-	3,833	1,533	1,533
Passenger Service			(6 month 0.66%)			
September	57,344	57,722	54,698	3,024		3,024
October	63,528	63,947	44,734	19,213		19,213
November	62,557	62,970	33,364	29,606	11,842	11,842
Specialty Shops			(6 month 4.59%)			
September	139,662	146,072	107,567	38,505		38,505
October	164,625	172,181	151,435	20,746		20,746
November	143,740	150,338	134,113	16,225	6,490	6,490
Parking						
Employee Parking			No Loss			
Public Parking			(5 month 17.39%)			
September	885,395	1,039,365	816,762	222,603		222,603
October	961,827	1,129,089	1,000,294	128,795		128,795
November	907,108	1,064,854	952,223	112,631	45,052	45,052
Parking Meters			(5 month 37.47%)			
September	153,039	210,383	132,537	77,846		77,846
October	176,271	242,320	124,283	118,037		118,037
November	188,626	259,304	116,515	142,789	57,116	57,116

Clark County Department of Aviation

McCarran International Airport

Business Interruption Loss due to September 11, 2001

	2000	Projection 2001	Actual 2001	Total	Loss of Revenue	
					To Nov 12	60 Days
Valet Parking			(5 month 23.77%)			
September	122,796	151,985	-	151,985		151,985
October	131,476	162,728	-	162,728		162,728
November	134,061	165,927	-	165,927	66,371	66,371
Park A Lot			(6 month 5.58%)			
September	18,150	19,163	18,710	453		453
October	31,125	32,862	8,313	24,549		24,549
November	19,950	21,063	-	21,063	8,425	8,425
Jet A Fuel Tax			(6 month -.32%)			
November	1,033,693	1,030,385	1,107,246	(76,861)		(76,861)
December	1,024,605	1,021,326	956,416	64,910		64,910
January	1,068,302	1,064,883	854,620	210,263	84,105	84,105
Totals				7,486,616	1,035,581	5,933,244

McCarran International Airport
Business Interruption Loss due to September 11, 2001
Historical Revenues and Trends

	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	FY Total	FY % Growth	6 mo. Tot. (Mar - Aug)	6 mos pr to Sept Growth
Landing Fees																
Scheduled Carriers																
FY2000	1,987,304	1,938,147	2,026,210	2,168,372	2,093,103	2,131,479	2,160,010	2,090,847	2,274,247	2,206,440	2,233,236	2,155,157	25,484,574			
FY2001	2,173,208	2,224,079	2,223,322	2,326,390	2,234,012	2,204,553	2,243,176	2,045,559	2,297,196	2,189,206	2,257,546	2,172,564	26,590,811	4.34%	13,286,387	1.12%
FY2002	2,242,736	2,276,158	1,910,305	2,163,701	2,018,476										13,435,406	
	3.20%	2.34%	-14.08%	-6.99%	-9.65%											
Charter Carriers																
FY2000	248,781	237,738	241,559	253,839	235,668	229,871	255,315	264,494	310,379	289,259	275,048	224,309	3,066,260			
FY2001	233,579	232,842	223,247	298,867	250,289	222,878	202,842	221,734	253,531	233,804	200,227	198,325	2,774,165	-9.53%	1,565,416	-16.84%
FY2002	214,104	201,856	191,983	183,737	167,093										1,301,847	
	-8.34%	-13.31%	-14.77%	-38.52%	-33.24%											
Mail Charters																
FY2000	27,327	28,318	30,909	34,629	45,195	51,655	44,149	46,805	51,525	47,691	49,405	50,912	508,520			
FY2001	42,838	53,971	47,705	47,928	48,644	47,648	45,655	42,301	46,803	42,609	48,718	46,147	560,967	10.31%	296,342	-7
FY2002	39,513	51,159	42,685	54,140	54,693										274,949	
	-7.76%	-5.21%	-10.52%	12.96%	12.44%											
Aircraft Service Fees																
Fuel Flowage Fees																
FY2000	149,838	189,848	236,430	188,838	193,670	206,295	138,855	284,652	221,890	161,764	166,919	233,369	2,372,388			
FY2001	155,564	174,121	191,267	191,373	199,577	164,615	180,163	154,535	198,942	157,942	171,633	159,131	2,098,863	-11.55%	1,113,627	-5.84%
FY2002	203,733	157,212	164,154	137,907	150,170										1,048,593	
	30.96%	-9.71%	-14.18%	-27.94%	-24.76%											
Ground Handling																
FY2000	68,933	60,037	60,787	67,090	65,668	71,098	64,821	67,738	80,529	67,620	73,627	114,422	862,370			
FY2001	103,795	108,380	124,769	144,218	135,033	138,016	113,944	124,366	146,369	135,922	128,673	129,250	1,532,735	77.74%	548,373	
FY2002	153,087	136,779	118,281	122,058	100,612										830,080	51.37%
	47.49%	26.20%	-5.20%	-15.37%	-23.49%											
Rental Fees																
Private Tenants																
FY2000	57,912	49,573	46,063	49,649	52,440	47,392	50,353	50,818	57,044	69,071	180,217	87,097	797,629			
FY2001	84,978	86,731	88,476	96,212	99,492	100,953	102,738	99,434	112,425	107,013	108,152	101,640	1,188,244	48.97%	565,138	18.59%
FY2002	120,578	120,372	89,016	96,770	100,345										670,180	
	41.89%	38.79%	0.61%	0.58%	1.08%										258,806	
Usage Fees																
Per Enplanement (Ticket Counter)																
FY2000	57,014	64,807	47,890	56,808	48,424	51,012	57,543	60,881	72,195	71,776	68,357	67,700	724,407			
FY2001	67,973	69,560	63,773	73,946	63,897	64,421	57,658	63,650	83,962	80,890	77,262	80,918	849,910	17.32%	417,561	
FY2002	83,987	85,942	49,873	70,012	58,144										492,961	18.06%
	23.56%	23.55%	-21.80%	-5.32%	-11.77%											
CTT Per Pax Fee																
FY2000	302,210	303,729	309,944	262,121	245,791	243,289	252,278	378,413	388,727	327,758	257,108	256,430	3,527,798			
FY2001	271,142	273,348	252,617	306,873	286,358	248,881	244,161	274,500	316,671	295,358	250,263	240,369	3,260,741	-7.57%	1,774,713	-10.01%
FY2002	242,712	251,748	150,081	162,547	155,278										1,597,121	
	-10.49%	-7.97%	-40.59%	-47.03%	-45.77%											
Passenger Facility Charge (PFC)																
FY2000	3,960,498	3,914,906	3,629,413	3,799,337	3,335,812	3,085,628	4,059,408	3,954,678	4,478,697	3,807,277	3,914,476	3,842,816	45,782,946			
FY2001	3,979,072	4,007,492	3,658,561	3,861,791	3,392,182	3,091,550	4,466,324	4,192,228	4,376,172	3,912,552	4,229,075	3,823,556	46,990,535	2.64%	24,029,830	5.03%
FY2002	4,403,993	4,492,715	2,599,760	3,211,657	2,903,994										25,238,043	
	10.68%	12.11%	-28.94%	-16.84%	-14.39%											
Concession Fees																
Gaming																
FY2000	2,214,943	2,351,100	2,018,527	2,365,641	2,298,165	2,443,321	1,515,806	2,593,066	2,778,895	2,381,303	2,714,268	1,916,768	27,591,803			
FY2001	2,469,575	2,424,190	2,244,686	2,837,747	2,578,329	2,650,940	1,751,781	2,221,173	2,813,757	2,464,038	2,377,821	2,024,737	28,858,774	4.59%	14,684,999	-0.36%
FY2002	2,579,389	2,372,787	2,081,565	3,134,194	2,442,877										14,632,729	
	4.45%	-2.12%	-7.27%	10.45%	-5.25%											

McCarran International Airport
Business Interruption Loss due to September 11, 2001
Historical Revenues and Trends

	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	FY Total	FY % Growth	6 mo. Ttl. (Mar - Aug)	6 mos pr to Sept Growth
Transportation Concessions																
Buses																
FY2000	14,314	16,858	24,555	38,910	30,265	22,191	23,624	28,324	36,049	26,356	25,424	24,380	311,250			
FY2001	20,419	25,302	28,583	38,871	36,147	18,476	32,839	29,587	32,733	38,160	36,955	36,946	375,018	20.49%	157,930	27.49%
FY2002	30,019	26,525	18,109	20,895	16,856										201,338	
	47.02%	4.83%	-36.64%	-46.25%	-53.37%											
Limecoaches																
FY2000	226,384	236,896	238,384	257,063	223,448	198,214	216,038	230,194	258,236	241,976	250,437	242,248	2,819,238			
FY2001	246,298	243,155	241,231	260,183	221,095	204,759	219,353	237,316	273,009	268,721	274,832	258,510	2,948,462	4.58%	1,482,350	23.94%
FY2002	376,643	385,536	327,026	373,119	368,099										1,837,251	
	52.92%	58.56%	35.57%	43.41%	66.49%	Two Month Avg	55.72%									
Rent Cars - On Airport																
FY2000	1,262,774	1,379,940	1,332,306	1,501,447	1,372,234	1,004,140	1,191,044	1,235,147	1,594,435	1,553,106	1,498,808	1,453,709	16,381,090			
FY2001	1,405,813	1,460,185	1,272,910	1,449,287	1,359,009	1,104,676	1,164,430	1,210,928	1,686,976	1,580,226	1,431,455	1,411,420	16,537,315	0.95%	8,968,056	
FY2002	1,443,406	1,483,921	1,149,742	1,292,709	1,156,171										9,037,404	
	2.67%	1.63%	-9.68%	-10.80%	-14.93%											
Rent Cars - Off Airport																
FY2000	312,223	297,157	281,192	303,972	275,408	228,095	218,275	251,539	316,782	300,505	293,331	289,176	3,367,655			
FY2001	299,184	295,799	264,485	277,649	232,984	201,139	171,069	207,689	277,398	276,575	272,009	250,434	3,026,414	-10.13%	1,794,777	
FY2002	285,155	278,746	205,148	225,804	189,154										1,640,317	
	-4.69%	-5.77%	-22.43%	-18.67%	-18.81%											
Taxis																
FY2000	176,500	216,750	226,650	226,050	245,550	165,000	238,650	245,870	252,650	222,700	258,350	219,300	2,690,070			
FY2001	189,150	218,100	206,650	235,750	216,950	137,600	238,350	241,500	281,500	241,150	224,000	219,250	2,667,950	-0.82%	1,560,250	5.65%
FY2002	225,350	245,850	190,150	259,800	180,000										1,437,100	
	19.14%	12.72%	-27.34%	2.38%	-17.03%											
Total Transportation Concessions Fees																
FY2000	2,028,924	2,165,747	2,100,781	2,329,154	2,148,089	1,618,950	1,926,939	2,013,901	2,460,250	2,348,836	2,328,469	2,229,876	25,699,556			
FY2001	2,185,340	2,259,278	2,015,875	2,281,950	2,067,037	1,691,962	1,846,027	1,944,061	2,556,099	2,406,449	2,259,939	2,177,369	25,691,386	-0.03%	13,812,049	2.97%
FY2002	2,382,412	2,439,882	1,851,271	2,173,049	1,911,128										14,222,150	
	9.02%	7.99%	-8.17%	-4.77%	-7.54%											
Sales Concessions																
Advertising																
FY2000	705,403	706,777	763,803	735,621	742,091	799,076	791,970	780,657	775,635	830,162	835,819	900,203	9,367,217			
FY2001	810,077	815,997	825,347	846,189	860,526	817,474	938,346	808,891	894,239	845,725	877,472	847,357	10,187,640	8.76%	4,967,893	2.37%
FY2002	798,448	822,578	792,472	766,953	798,701										5,085,819	
	-1.44%	0.81%	-3.98%	-9.36%	-7.18%											
Bars																
FY2000	106,655	111,687	126,155	135,710	127,774	105,880	136,388	142,043	171,268	141,442	145,250	141,445	1,591,697			
FY2001	123,785	133,790	128,702	157,733	141,110	128,583	138,559	144,403	173,842	138,220	135,858	128,351	1,672,936	5.10%	856,980	
FY2002	120,763	128,947	99,553	151,319	134,189										825,981	
	-2.44%	-3.62%	-22.65%	-4.07%	-4.90%											
Restaurants																
FY2000	217,942	225,211	218,386	240,022	229,458	193,678	222,638	235,030	271,552	243,941	244,905	256,063	2,798,826			
FY2001	271,330	271,142	269,000	196,188	290,467	241,381	238,467	240,350	291,725	294,883	294,000	228,950	3,128,083	11.76%	1,558,933	9.13%
FY2002	289,683	301,955	215,477	327,779	290,378										1,701,196	
	6.76%	11.36%	-19.90%	67.07%	-0.03%											
Catering																
FY2000	165,776	170,215	207,642	209,474	201,234	212,495	196,848	213,706	251,774	215,685	217,608	250,064	2,512,521			
FY2001	219,869	231,708	260,217	253,202	242,168	268,691	212,803	214,344	266,060	231,020	229,585	273,136	2,902,803	15.53%	1,386,708	7.62%
FY2002	243,610	248,948	230,466	189,440	160,165										1,492,359	
	10.80%	7.44%	-11.43%	-25.18%	-33.86%											
Clothing Shops																
FY2000	42,592	42,954	50,624	55,125	53,553	40,650	47,331	49,661	55,549	56,592	58,613	54,591	607,835			
FY2001	55,314	55,110	58,560	72,666	60,153	50,472	54,705	56,740	64,443	62,333	64,347	63,015	717,858	18.10%	335,769	11.09%
FY2002	57,797	61,084	45,288	63,638	55,738										373,019	
	4.49%	10.84%	-22.66%	-12.42%	-7.34%											
Gift Shops																
FY2000	461,152	414,231	450,112	553,020	483,605	363,211	426,813	497,371	457,700	505,453	445,575	459,930	5,518,173			
FY2001	536,875	567,615	481,475	569,868	484,356	409,550	506,780	508,162	547,309	515,380	443,467	486,365	6,057,202	9.77%	2,973,148	1.36%
FY2002	530,878	490,104	365,291	546,673	403,686										3,013,503	
	-1.12%	-13.66%	-24.13%	-4.07%	-16.66%											

McCarren International Airport
Business Interruption Loss due to September 11, 2001
Historical Revenues and Trends

	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	FY Total	FY % Growth	6 mo. Tot. (Mar - Aug)	6 mos pr to Sept Growth
Lockers																
FY2000	2,461	2,637	2,428	3,253	3,498	3,442	3,603	2,342	5,009	4,467	4,011	4,746	41,897			
FY2001	4,003	3,689	4,424	2,534	3,984	3,915	3,821	3,478	3,909	4,488	4,046	4,353	46,644	11.33%	25,925	-3.78%
FY2002	4,220	3,928	-	-100.00%	-	-	-	-	-	-	-	-	-		24,944	0.66%
Passenger Service																
FY2000	45,589	43,987	43,631	47,849	49,375	44,970	52,623	56,827	58,854	57,870	58,573	59,474	619,622			
FY2001	58,733	62,170	57,344	63,528	62,557	65,902	51,958	59,861	63,960	53,283	58,266	61,353	718,915	16.02%	355,674	0.66%
FY2002	58,938	62,221	54,698	44,734	33,364	-	-	-	-	-	-	-	-		358,021	4.59%
Specialty Shops																
FY2000	112,640	119,234	129,729	147,557	131,923	110,122	119,439	132,050	142,710	138,400	136,231	128,303	1,548,538			
FY2001	128,838	138,510	139,662	164,625	143,740	125,393	130,209	138,947	153,176	144,967	139,946	136,252	1,684,265	8.76%	813,192	9.67%
FY2002	135,516	140,656	107,567	151,435	134,113	-	-	-	-	-	-	-	-		850,513	
Total Sales Concession Fees																
FY2000	2,105,516	2,080,649	2,237,186	2,368,919	2,266,493	2,116,257	2,223,521	2,336,511	2,417,338	2,381,041	2,334,472	2,601,315	27,469,218			
FY2001	2,394,707	2,475,374	2,377,632	2,842,734	2,473,109	2,291,875	2,460,412	2,360,714	2,650,430	2,445,314	3,423,732	2,613,241	30,809,274	12.16%	14,604,247	
FY2002	2,455,723	2,448,427	2,108,295	2,435,278	2,286,953	-	-	-	-	-	-	-	-		16,016,867	
	1.71%	-1.09%	-11.33%	-14.33%	-7.53%											
Parking																
Employee Parking																
FY2000	85,283	107,850	95,600	97,600	94,917	99,188	136,639	118,112	99,492	99,080	98,752	101,530	1,234,043			
FY2001	127,634	115,028	101,185	102,170	102,550	108,160	143,020	118,565	106,104	105,910	107,015	123,500	1,360,841	10.28%	641,516	18.51%
FY2002	160,815	156,890	143,195	132,510	136,988	-	-	-	-	-	-	-	-		760,234	
Public Parking																
FY2000	839,268	882,814	805,582	856,662	869,001	799,455	715,245	727,074	804,839	859,147	936,985	945,732	10,041,804			
FY2001	965,954	939,470	885,395	961,827	907,108	883,210	788,512	759,570	870,564	1,024,837	1,112,793	1,073,625	11,172,865	11.26%	5,452,127	16.03%
FY2002	1,114,209	1,130,134	816,762	1,000,294	952,223	-	-	-	-	-	-	-	-		6,326,162	
	15.35%	20.29%	-7.75%	4.00%	4.97%											
Parking Meters																
FY2000	196,640	194,745	149,672	162,488	177,122	198,673	155,110	152,503	177,526	184,378	177,400	205,764	2,132,221			
FY2001	211,572	210,762	153,039	176,271	188,626	216,464	163,429	151,018	186,904	255,158	233,354	277,063	2,423,660	13.67%	1,167,602	32.58%
FY2002	293,069	302,430	132,537	124,283	116,515	-	-	-	-	-	-	-	-		1,547,978	
	38.52%	43.49%	-13.40%	-29.49%	-38.23%											
Valet Parking																
FY2000	120,007	94,828	113,491	124,460	116,667	119,893	120,712	120,834	120,834	121,113	125,231	120,834	1,418,904			
FY2001	131,463	134,029	122,796	131,476	134,061	129,515	122,511	122,122	126,700	149,069	159,348	155,450	1,618,540	14.07%	753,504	20.7%
FY2002	159,031	160,130	-	120,834	120,834	-	-	-	-	-	-	-	-		909,728	
	20.97%	19.47%	-100.00%	-8.09%	-9.87%											
Park A Lot																
FY2000	24,120	19,800	20,824	21,840	19,740	24,480	22,824	21,050	19,720	20,432	21,640	27,960	264,430			
FY2001	18,044	26,610	18,150	31,125	19,950	28,800	24,150	22,575	23,100	28,125	21,000	22,650	284,279	7.51%	134,406	5.58%
FY2002	19,875	27,150	18,710	8,313	-	-	-	-	-	-	-	-	-		141,900	
	10.15%	2.03%	3.09%	-73.29%	-100.00%											
Total Parking Revenue																
FY2000	1,310,979	1,326,428	1,207,526	1,283,217	1,298,578	1,275,254	1,178,640	1,180,673	1,266,645	1,318,382	1,395,149	1,408,923	15,450,394			
FY2001	1,482,766	1,465,580	1,313,566	1,434,296	1,391,678	1,401,040	1,282,074	1,203,878	1,348,687	1,594,791	1,668,722	1,684,229	17,271,307	11.79%	8,317,445	18.65%
FY2002	1,783,196	1,813,114	1,137,652	1,428,540	1,327,807	-	-	-	-	-	-	-	-		9,892,759	-0.32%
	20.26%	23.71%	-13.39%	-0.40%	-4.59%											
JWA Fuel Tax																
FY2000	891,290	801,756	845,207	871,406	925,463	995,732	980,086	949,453	1,010,079	923,740	969,474	976,918	11,140,604			
FY2001	1,054,781	1,015,983	948,323	998,734	1,033,693	1,024,605	1,068,302	937,704	986,029	881,132	1,082,429	957,444	11,989,159	7.62%	5,950,975	
FY2002	1,016,566	1,008,417	1,002,107	854,006	1,107,246	956,416	854,620	-	-	-	-	-	-		5,932,017	
	-3.62%	-0.74%	5.67%	-14.69%	7.12%	-6.66%	-20.00%									

Clark County Department of Aviation - McCarran International Airport
Additional Expenses due to September 11, 2001
September 11, 2001 thru November 12, 2001

New, Additional, or Revised Security Requirement(s)	Actual Direct Cost(s) incurred 9/11/01- 01/18/02	Actual Direct Cost(s) incurred 9/11/01- 11/12/01
Increased Law Enforcement Officer personnel/overtime	\$313,834	
Increased other personnel/overtime	\$332,716	
Supplies	\$95,776	
Outside services, contractor support, etc.	\$1,500,019	
Total	\$2,242,345	
War Risk Premium		\$ 1,481,800
Total Costs less War Risk Premium		760,545
Days (9/11/01 to 01/18/02)		129
Costs per day		5,896
War Risk Premium Cost per Day		4,060
Total Cost per day		9,955
Days Covered		60
60 Days of Extra Expenses		\$ 597,326



RECYCLED PAPER MADE FROM 30% POST CONSUMER CONTENT

EXHIBIT “D”

FM Global

Factory Mutual Insurance Company
21860 Burbank Blvd., Suite 300
Woodland Hills, CA 91367
T: 818 704 1133 F: 818 340 8654
e-mail: jeffrey.casillas@fmglobal.com

April 16, 2002

RECEIVED
McCARRAN INT'L AIRPORT

APR 19 2002

Mr. R. Ross Johnson
Assistant Director of Aviation, Finance
Clark County Department of Aviation
P.O. Box 11005
Las Vegas, NV 89111-1005

ACCOUNTING OFFICE

2902

Re: **Clark County Department of Aviation
Las Vegas, NV**
Loss No. 04309-01-08-01; September 11, 2001
Index No. 79301.53
Account No. 1-33186

Dear Mr. Johnson:

This letter will confirm our receipt of your letters dated February 22, and March 22, 2002 regarding the above referenced matter. Attached to your March 22, 2002 letter was a Sworn Statement in Proof of Loss in the amount of \$6,530,570.00.

Factory Mutual Insurance Company ("FM Global") has considered Clark County Department of Aviation's ("Clark County's") claim for losses reportedly caused by the September 11, 2001 coordinated terrorist attack. Based on FM Global's review of the information provided to date, there is no coverage for Clark County's claimed loss, under FM Global Policy No. UA864, as explained below.

On November 8, 2001, Clark County notified FM Global of a claim for losses reportedly caused by the September 11, 2001 coordinated terrorist attack. In Clark County's initial notice letter, it reported that the Clark County Airport System, including McCarran International Airport, the North Las Vegas Airport, and the Henderson Executive Airport were closed because of the September 11 terrorist attack. Clark County further advised that there was a reduction in the number of passengers and airport revenue generating activities.

FM Global insured Clark County for the policy period October 1, 2000 to October 1, 2003, under its Policy No. UA864. The coverage is subject to the policy's terms, conditions, limitations and exclusions.

Generally, the FM Global policy provides time element (business interruption and extra expense) coverage for interruptions caused by direct physical loss or damage to insured property:

TIME ELEMENT - SECTION C

1. LOSS INSURED

- A. This Policy insures TIME ELEMENT loss, as provided in the TIME ELEMENT COVERAGES, directly resulting from physical loss or damage of the type insured by this Policy:
- 1) to property described elsewhere in this Policy and not otherwise excluded by this Policy or otherwise limited in the TIME ELEMENT COVERAGES below;
 - 2) used by the Insured, or for which the Insured has contracted use;
 - 3) located at an Insured Location; and
 - 4) during the Periods of Liability described in this section.

Here, there was no physical loss or damage to any insured property described in the FM Global policy. Absent the requisite physical loss or damage to insured property, there can be no time element coverage under this provision.

Clark County asserts that there is coverage under the following ingress and egress provision:

TIME ELEMENT - SECTION C

3. TIME ELEMENT COVERAGE EXTENSIONS

C. INGRESS/EGRESS

This Policy covers the Actual Loss Sustained and EXTRA EXPENSE incurred by the Insured due to the necessary interruption of the Insured's business due to prevention of ingress to or egress from an

Insured Location, whether or not the premises or property of the Insured is damaged, provided that such prevention is a direct result of physical damage of the type insured by this Policy, to the kind of property not excluded by this Policy.

We believe that Clark County has misconstrued the essential operative facts pertaining to its claim as applied to this coverage. Ingress to and egress from McCarran International Airport, North Las Vegas Airport, and the Henderson Executive Airport was not prevented as a "direct result of physical damage." The physical damage to the World Trade Center ("WTC") and Pentagon, occurring approximately 2,500 miles away, clearly did not prevent access to these airports. Rather, the alleged prevention of access was caused by orders of civil authority, including the FAA order, and was not caused by physical loss or damage

The FM Global policy specifically makes provision for the impact of orders of civil authority on the period of liability for time element coverages:

4. PERIOD OF LIABILITY

- A. The PERIOD OF LIABILITY applying to all TIME ELEMENT COVERAGES, except LEASEHOLD INTEREST and as shown below, or if otherwise provided under the TIME ELEMENT COVERAGE EXTENSION, is as follows:

* * *

- 8) If an order of civil authority prohibits access to the Insured Location and provided such order is the direct result of physical damage of the type insured against under this Policy at the Insured Location or within 1,000 feet of it, the period of time:
- a) starting at the time of such physical damage; but
 - b) not to exceed 30 consecutive days.

Here, the FAA order in question clearly did not directly result from physical damage at any Clark County airport or within 1,000 feet of them. To the contrary, the directive arose out of safety concerns. Even if it could somehow be said that the order directly resulted from and continued because of the damage to the WTC or Pentagon, the requirements of the civil authority provision in the policy would not be met, as said damage did not occur "at the insured location or within 1,000 feet of it."

Clark County also asserts that there is coverage under the following contingent time element provision:

TIME ELEMENT - SECTION C

3. TIME ELEMENT COVERAGE EXTENSIONS

A. CONTINGENT TIME ELEMENT

This Policy covers the Actual Loss Sustained and EXTRA EXPENSE incurred by the Insured during the PERIOD OF LIABILITY:

1) directly resulting from physical loss or damage of the type insured; and

2) to property of the type insured,

at any locations of direct suppliers or customers located within the TERRITORY of this Policy.

The term "supplier or customer" does not include any company supplying to or receiving from the Insured Location, as described elsewhere in this Policy, electricity, fuel, gas, water, steam, refrigeration, sewage or telecommunications.

The contingent time element coverage requires physical loss or damage of the type insured at a direct supplier or customer location. The WTC and Pentagon are not "direct supplier or customer" locations. Therefore, there is no contingent time element coverage under the FM Global policy.

Additionally, Clark County asserts that there is coverage under the following protection and preservation of property provisions of the policy:

PROPERTY DAMAGE - SECTION B

3. ADDITIONAL COVERAGES

Clark County Dept. of Aviation
Las Vegas, NV
D/L: Sept. 11, 2001

Page 5

**Q. PROTECTION AND PRESERVATION OF
PROPERTY**

This Policy covers:

- 1) reasonable and necessary costs incurred for actions to temporarily protect or preserve insured property; provided such actions are necessary due to actual, or to prevent immediately impending, insured physical loss or damage to such insured property.

TIME ELEMENT - SECTION C

3. TIME ELEMENT COVERAGE EXTENSIONS

**C. PROTECTION AND PRESERVATION OF
PROPERTY - TIME ELEMENT**

This Policy covers the Actual Loss Sustained by the Insured for a period of time not to exceed 48 hours prior to and 48 hours after the Insured first taking reasonable action for the temporary protection and preservation of property insured by this Policy provided such action is necessary to prevent immediately impending physical loss or damage insured by this Policy at such insured property.

This Extension is subject to the deductible provisions that would have applied had the physical loss or damage occurred.

Both provisions require either actual or immediately impending physical loss or damage insured by the policy to insured property at an insured location. We have not been provided with any information or documentation that demonstrates that there was actual or immediately impending physical loss or damage, or even a threat of such loss or damage, to any of Clark County-owned airports or other insured property at an insured location named in the Clark County Policy. Even if there were such a threat, the closure of the facility was not to protect and preserve the insured property from the only known risk of physical loss; which would have been potential physical damage caused by the hijacked planes. Rather, the closure of the facility was designed to protect and preserve the physical safety of others. For these reasons, there is no coverage under the Protection and Preservation of Property provisions of the policy.

Clark County Dept. of Aviation
Las Vegas, NV
D/L: Sept. 11, 2001

Page 6

Finally, assuming for argument's sake, time element coverage were triggered, the following exclusions contained in the policy would preclude coverage:

5. TIME ELEMENT EXCLUSIONS

In addition to the exclusions elsewhere in this Policy, the following exclusions apply to TIME ELEMENT loss:

This Policy does not insure against:

- A. Any loss during any idle period, including but not limited to when production, operation, service or delivery or receipt of goods would cease, or would not have taken place or would have been prevented due to:

- 4) any other reason other than physical loss or damage insured by this Policy.

- B. Any increase in loss due to:

- 4) any other consequential or remote loss


In sum, based on FM Global's review of information and claim submitted to date, there is no coverage under FM Global's policy for Clark County's claim.

FM Global would be pleased to consider any further information or documentation that Clark County wishes to submit relating to any of the issues addressed in this letter. FM Global will review and consider any such information or documentation. In the absence of any additional documentation or information, Clark County may consider this letter to be a denial of its claim and a rejection of the submitted Sworn Statement in Proof of Loss.

You are respectfully advised that neither this letter nor any conduct related to the matter shall be construed as a waiver of, nor shall FM Global be estopped from asserting in the future, any rights or defenses it may have under its policy or any applicable regulation or law. FM Global expressly reserves all such rights and defenses.

Please contact me if you have any questions.

Sincerely,



Jeffrey C. Casillas
Operations Vice President/
Los Angeles Operations Claim Manager

Clark County Dept. of Aviation

Page 7

Las Vegas, NV

D/L: Sept. 11, 2001

cc: Mr. Lloyd W. Cutler, CPCU
KELLOG , CUTLER, YENCHEK, LADUKE, HOLMES
INSURANCE SERVICES
330 E. Charleston Blvd.
Las Vegas, NV 89104

Mr. Marc Traasdahl
CLARK COUNTY NEVADA
Department of Aviation
P.O. Box 11005
Las Vegas, NV 89111-11005

Ms. Gwyn Taylor
CLARK COUNTY NEVADA
Department of Aviation
P.O. Box 11005
Las Vegas, NV 89111-11005

Mr. Thomas Murry
DELOITTE & TOUCHE
"Dispute Resolution Services"
695 Town Center Drive, Suite 1200
Costa Mesa, CA 92626-7188

SWORN STATEMENT IN PROOF OF LOSS

Claim no. 1

\$1,567,393,000

AMOUNT OF POLICY AT TIME OF LOSS

1 October, 2000

DATE ISSUED

1 October, 2001

DATE EXPIRES

UA864

POLICY NO.

Kellogg, Cutler, Yenchek, La Duke, Holmes Ins. Services

AGENCY AT

Lloyd W. Cutler, CPCU

AGENT

To the Factory Mutual Insurance Company of Johnston, Rhode Island. At time of loss, by the above indicated policy of insurance you insured The Clark County Department of Aviation and other entities as per the Named Insured provision of the Policy against loss by Interruption of the Insured's business to the property described under Schedule "A", according to the term and conditions of the said policy and all forms, endorsement, transfers and assignments attached thereto.

1. **Time and Origin:** A Interruption of the Insured's business loss occurred about the hour of 08:00 o'clock AM., on the 11th day of September, 2001. The cause and origin of the said loss were: The damage to, destruction of, and collapse of buildings at the World Trade Center in New York City and the Pentagon in Washington, D.C. and the resulting order of federal authorities closing the national airspace.

2. **Occupancy:** The building described, or containing the property described, was occupied at the time of the loss as follows, and for no other purpose whatever: NA

3. **Title and Interest:** At the time of the loss the interest of your insured in the property described therein was NA. No other person or persons had any interest therein or incumbrance thereon, except: NA.

4. **Changes:** Since the said policy was issued there has been no assignment thereof, or change of interest, use, occupancy, possession, location or exposure of the property described, except: NONE

5. **Total Insurance:** The total amount of insurance upon the property described by this policy was, at the time of the loss \$1,567,393,000, as more particularly specified in the apportionment attached under Schedule "C", besides which there was no policy or other contract of insurance, written or oral, valid or invalid.

6. **The Actual Cash Value** of said property at the time of loss was NA

7. **The Whole Loss and Damage** was \$6,530,570

8. **The Amount Claimed** under the above numbered policy is \$6,530,570

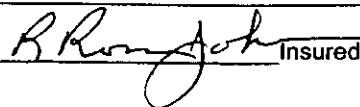
The said loss did not originate by any act, design or procurement on the part of your insured, or this affiant; nothing has been done by or with the privity or consent of your insured or this affiant, to violate the conditions of the policy, or render it void; no articles are mentioned herein or in annexed schedules but such as were destroyed or damaged at the time of said loss; no property saved has in any manner been concealed, and no attempt to deceive the said company, as to the extent of said loss, has in any manner been made. Any other information that may be required will be furnished and considered a part of this proof.

The furnishing of this blank or the preparation of proofs by a representative of the above insurance company is not a waiver of any of its rights.

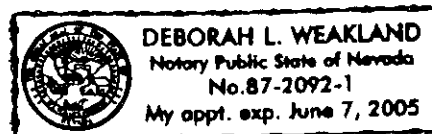
Clark County Department of Aviation

State of NEVADACounty of CLARK

by:

 Insured
Subscribed and sworn to before me this 22ND day of MARCH, 2002


Notary Public





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EXHIBIT “E”

LAS VEGAS



McCARRAN INTERNATIONAL AIRPORT

Department of Aviation

RANDALL H. WALKER

DIRECTOR

ROSEMARY A. VASSILIADIS

DEPUTY DIRECTOR

POSTAL BOX 11005

LAS VEGAS, NEVADA 89111-1005

(702) 261-5211

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E-MAIL: webmaster2@mccarran.com

April 30, 2002

Jeffrey Casillas
Operations Vice President/
Los Angeles Operations Claims Manager
Factory Mutual Insurance Company
21860 Burbank Blvd., Suite 300
Woodland Hills, CA 91367

CERTIFIED MAIL#70001670001050292406

RETURN RECEIPT REQUESTED

Re: Policy No.: UA864
Claim Associated With September 11, 2001 Terrorist Attacks

Dear Mr. Casillas:

I write in response to your letter of April 16, 2002 denying coverage for Clark County Department of Aviation's ("Clark County") claim under FM Global policy No. UA864 (1 October 2000 to 1 October 2003) (the "Policy") for loss caused by the terrorist attacks of September 11, 2001. Frankly, I was disappointed by the superficial and dismissive manner in which you disclaimed coverage of Clark County's legitimate and substantial claim. Your failure to counter—or even acknowledge—the points raised in my February 22, 2002 letter reaffirms my belief in the strength of Clark County's arguments for coverage.

While a number of policy provisions, including the Policy's Protection and Preservation of Property section, Section B. 3. Q., page 15; Contingent Time Element Extension, Section C. 3. A., page 30; and Ingress/Egress Time Element Extension, Section C. 3. C., page 31, support coverage for Clark County's loss, my February 22 letter focussed on the clear coverage provided by the broad Ingress/Egress Extension. Although I do not intend to restate the entire content of my February 22 letter, I would like to draw your attention to some of your letter's central deficiencies.

First, my letter explained why, under the plain language of the Policy, the civil authority provisions of section C.4.A.8. cannot be read as a limitation on coverage under the Ingress/Egress Extension:

"Your attempt to impose the limitations of section C.4.A.8. onto the Ingress/Egress Extension is misplaced and contrary to the language of both those sections. Specifically, during our meeting and in your November 27 letter, you suggest that there can be no coverage to Clark County's pending claims because '[a]ccess to insured premises was not prohibited or impaired by governmental order because of existing physical loss or damage at or near proximity of the insured premises.' The separate coverage provision you reference (C.4.A.8, at page 35) has no application to the Ingress/Egress Extension by the express wording of Section C.4.A. itself. The provisions of Section C.4.A. – including Section C.4.A.8. – unambiguously and expressly do not apply 'if otherwise provided under the TIME ELEMENT COVERAGE EXTENSIONS.' (Policy, p. 33.) The Ingress/Egress coverage is one of these 'TIME ELEMENT EXTENSIONS' and 'provides otherwise' by providing coverage 'whether or not the premises or property of the Insured is damaged' and subject to the 'number of consecutive days shown in the Limits of Liability clause . . .' (Policy, p. 31). Accordingly, the circumstances and limitations of Section C.4.A.8. have no application to Clark County's claim by express Policy terms."



Clark County Board of Commissioners

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Yvonne Atkinson Gates • Erin Kenny • Mary J. Kincaid • Chip Maxfield • Bruce L. Woodbury

"Moreover, the Policy cannot be rewritten after the fact to turn the relatively obscure provisions of Section C.4.A.8. into an exclusionary provision or a limitation on the broad Ingress/Egress Extension. Exclusions in a policy must be clear and clearly stated. Thus, '[a]ny attempt to restrict insurance coverage must be done clearly and explicitly.' *Farmers Ins. Exchange v. Young*, 108 Nev. 328, 330 (1992). Similarly, the Policy cannot be interpreted to limit or nullify the broad promise of coverage under the Ingress/Egress Extension by imposing the contrary or limiting provisions of Section C.4.A.8. (which, again, does not even apply to the Ingress/Egress Extension by the express terms of C.4.A.) See *National Union Fire Ins. Co. of the State of PA, Inc. v. Reno's Executive Air, Inc.*, 100 Nev. 360, 366 (1984)('When a policy has been issued which purportedly provides coverage but whose exclusionary provisions as interpreted by the insurer would narrow the coverage to defeat the purpose of the insurance, the policy must be construed against the insurer.')."

Your letter ignores Clark County's position entirely and, without any explanation, denies coverage based on a misapplication of "the requirements of the civil authority provision in the policy." Your silence suggests that you have no good answer to Clark County's reading of the Policy's actual language.

My February 22 letter also explained that the Policy's requirement that prevention of ingress or egress be a "direct result" of physical damage does not require an immediate causal connection:

"In our conversations . . . you have exhibited a misconception of the meaning of the phrase 'direct result.' Contrary to your apparent misinterpretation, 'direct,' unlike 'immediate,' does not refer to the last cause in a chain of events. The Policy uses the word 'immediate' rather than 'direct' to impose the kind of 'next in line' requirement you seem to have in mind. For example, the Service Interruption Time Element Extension requires an accidental occurrence that 'immediately prevents' delivery of services. No such 'immediacy' link is imposed in the Ingress/Egress Extension."

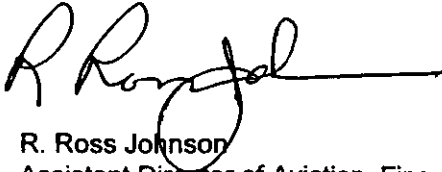
"By contrast, the Ingress/Egress Extension speaks of a 'direct result' that requires only that the damage to the World Trade Center and the Pentagon be the 'efficient proximate cause' of the prevention of ingress or egress. See *Chlor Alkali Co., Inc. v. National Union Fire Ins. Co. of Pittsburgh, PA*, 863 F. Supp. 1226 (D. Nev. 1994)(explaining that '[t]he efficient proximate cause is not necessarily the last in a chain of events' and that '[t]he efficient proximate cause doctrine . . . looks to the quality of the links in the chain to determine which is the predominant cause.'). The efficient proximate cause is 'the one that sets others in motion.' *Id.* Clark County's losses were clearly 'set in motion' by the September 11 attacks. In other words, Clark County's losses were 'directly caused' by the physical damage to the World Trade Center and the Pentagon. Thus, again, this coverage component of the Ingress/Egress Extension has clearly been satisfied by Clark County's pending claim."

I explained how the shutdown of Clark County's airports was, unquestionably, the "direct result" of "physical damage" to the World Trade Center and the Pentagon. Your letter ignored what I had to say and simply made the incorrect statement that ingress and egress "was not prevented as a 'direct result of physical damage.'" Your bald assertion cannot displace the clear coverage under the actual Policy language.

We have given considerable thought to submission of the subject claim and believe that it is a legitimate and clearly covered claim under the FM Policy. Your letter and our prior meeting have done nothing to change that belief. Indeed, to the contrary, your failure even to address our coverage analysis, let alone present any arguments to refute it, provides us with a confirmation of the legitimacy of our claim.

Considering our prior and ongoing relationship, we would like to resolve this matter amicably. Accordingly, Clark County requests that you engage in a meaningful dialogue by considering the positions set out in my February 22 letter and reconsidering your denial of coverage. I stand ready to meet with you in an attempt to resolve Clark County's claim on a mutually amicable basis.

Sincerely,



R. Ross Johnson
Assistant Director of Aviation, Finance

cc: Randall H. Walker
Rosemary Vassiliadis
E. Lee Thomson
Marc Traasdahl

Mr. Lloyd W. Cutler, PCU
KELLOG, CUTLER, YENCHEK, LADUKE, HOLMES INSURANCE SERVICES
330 E. Charleston Blvd.
Las Vegas, NV 89104

Mr. Thomas R. Mury
DELOITTE & TOUCHE
Dispute Consulting Services
695 Town Center Drive, Suite 1200
Costa Mesa, CA 92626-7188

Mr. Rod Fisher
Vice President, Operations Manager
FM GLOBAL
21860 Burbank Boulevard, Suite 300
Woodland Hills, CA 91367

Mr. Gerry L. Alonso, RPA
Vice President, Western Division Claims Manager
FM GLOBAL
Granite Park One, 5800 Granite Parkway, Suite 600
Plano, TX 75024

Mr. David W. Steuber, Partner
HOWREY, SIMON, ARNOLD & WHITE ATTORNEYS AT LAW
550 South Hope Street, Suite 1400
Los Angeles, CA 90071-2627

EXHIBIT “F”

FM Global

Factory Mutual Insurance Company
21860 Burbank Blvd., Suite 300
Woodland Hills, CA 91367
T: 818 704 1133 F: 818 340 8654
e-mail: jeffrey.casillas@fmglobal.com

May 28, 2002

Mr. R. Ross Johnson
Assistant Director of Aviation, Finance
Clark County Department of Aviation
P.O. Box 11005
Las Vegas, NV 89111-1005

RECEIVED
McCARRAN INTERNATIONAL AIRPORT

MAY 30 2002

ASSISTANT DIRECTOR OF AVIATION
FINANCE

10701

Re: **Clark County Department of Aviation
Las Vegas, NV**
Loss No. 04309-01-08-01; September 11, 2001
Index No. 79301.53
Account No. 1-33186

Dear Mr. Johnson:

This letter responds to your April 30 letter. Preliminarily, you claim that FM Global failed to counter or even acknowledge the points raised in your February 22 letter. We disagree. But FM Global will do so again, focusing in particular on the portions of the February 22 letter that you address in your April 30 letter.

First, you assert that the civil authority provision cannot be read as a limitation on coverage under the Ingress/Egress provision. That is not necessary to FM Global's position. Rather, these are separate and distinct coverage provisions, each with separate and distinct coverage requirements and application. The facts submitted to date in support of your claim fail to satisfy the requirements of either provision.

The Ingress/Egress provision potentially provides coverage for a business interruption only where ingress to/egress from an insured location is physically prevented by physical damage of the type insured. Where, however, access to the insured location is not physically prevented, but is instead prohibited by order of civil authority, coverage if any, for the resulting business interruption is provided by the civil authority provision, if its requirements for coverage are satisfied. In such circumstances, any "prevention" of access is not "a direct result of physical damage" as would be required by the Ingress/Egress provision. Rather, it is a direct result of the prohibition on access ordered by the civil authority.

So if there is "prevention" of ingress to or egress from an insured location and the direct reason for that "prevention" of ingress or egress is an order of civil authority rather than physical damage, the FM Global policy would respond for a period not to exceed 30 days "provided such order is the direct result of physical damage of the type insured against under this Policy at the Insured Location or within 1,000 feet of it." If, however, the order of civil authority was not the

Clark County Dept. of Aviation
Las Vegas, NV
D/L: Sept. 11, 2001

Page 2

direct result of physical damage of the type insured against under the policy at the insured location or within 1,000 feet of it, the FM Global policy would not respond.

Here, ingress to or egress from the insured locations were never prevented by physical damage of the type insured. Since there was no prevention as a direct result of physical damage, the ingress/egress provision cannot apply. Similarly, since access to an insured location was not prohibited by order or of civil authority which was a direct result of physical damage of the type insured at or within 1,000 feet of an insured location, the civil authority provision does not apply to the claim.

Second, you assert that the FM Global policy's requirement that prevention of ingress or egress be a "direct result" of physical damage does not require an immediate causal connection. Whatever you might mean by this statement, the policy requires that physical damage prevents ingress or egress, i.e., that physical damage must be the "direct" cause of the prevention of ingress or egress. Ingress is defined in the dictionary to mean the act of entering. Similarly, egress is defined to mean the act of going out or leaving. The damage to the World Trade Center and Pentagon did not prevent people from entering or leaving the Clark County airports.

We note your reference to the *Chlor Alkali* case and the efficient proximate cause doctrine. Our understanding of the doctrine is that it may be used to determine whether there is coverage when both covered and excluded perils have contributed to the loss. Under the efficient proximate cause doctrine, if the predominant cause is a covered peril, the loss is covered by the policy, even if other non-covered causes contributed to it; if the predominant cause is an excluded peril, the loss is not covered.

We do not view Clark County's loss as one involving both covered and excluded perils, and thus we do not believe the efficient proximate cause doctrine applies here. Moreover, efficient proximate cause does not mean the *triggering cause*, which is essentially how you have characterized the damage at the World Trade Center and Pentagon. Instead, it refers to the predominant cause, which we understand means the most important cause.

Even if we also assume that ingress to and egress from the Clark County airports was prevented—a fact that you have not yet established—the damage to the World Trade Center and Pentagon was certainly not the cause. The damage to the World Trade Center and Pentagon, occurring approximately 2,500 miles away, clearly did not prevent people from entering or leaving the Clark County airports. If the damage to World Trade Center and Pentagon were the cause, there would still be a lack of access to Clark County's airports today because that damage still exists. Rather, the prevention of access—if there actually was any—was caused by an order of a civil authority.

Third, in our April 16 letter, we advised that FM Global would be pleased to consider any further information or documentation that Clark County wished to submit on any of the issues addressed in our letter. You have not provided any additional information or documentation relating to coverage or the positions you have asserted, so we presume that none exists. If that is in any way incorrect, please let me know.

Clark County Dept. of Aviation
Las Vegas, NV
D/L: Sept. 11, 2001

Page 3

Finally, you have requested a meeting to engage in a meaningful dialogue relating to the positions set forth in your February 22 letter. We are happy to meet with you to engage in this dialogue.

You are respectfully advised that neither this letter nor any conduct related to the matter shall be construed as a waiver of, nor shall FM Global be estopped from asserting in the future, any rights or defenses it may have under its policy or any applicable regulation or law. FM Global expressly reserves all such rights and defenses.

Please contact me if you have any questions.

Sincerely,



Jeffrey C. Casillas
Operations Vice President/
Los Angeles Operations Claim Manager

cc: Mr. Lloyd W. Cutler, CPCU
KELLOG, CUTLER, YENCHEK, LADUKE, HOLMES
INSURANCE SERVICES
330 E. Charleston Blvd.
Las Vegas, NV 89104

Mr. Marc Traasdahl
CLARK COUNTY NEVADA
Department of Aviation
P.O. Box 11005
Las Vegas, NV 89111-11005

Ms. Gwyn Taylor
CLARK COUNTY NEVADA
Department of Aviation
P.O. Box 11005
Las Vegas, NV 89111-11005

Mr. Thomas Mury
DELOITTE & TOUCHE
Dispute Consulting Services
695 Town Center Drive, Suite 1200
Costa Mesa, CA 92626-7188



RECYCLED PAPER MADE FROM 30% POST CONSUMER CONTENT

EXHIBIT “G”

BY CERTIFIED MAIL: return receipt requested



RECEIVED
McCARRAN INT'L AIRPORT

JUL 05 2002

Factory Mutual Insurance Company
21860 Burbank Boulevard, Suite. 300
Woodland Hills, CA 91367-6493
Tel. (818) 704-1133
FAX (818) 883-0759

ACCOUNTING OFFICE

3057

Mailing Address: P. O. Box 9270 – Van Nuys, CA 91409

NOTICE OF POLICY TERMINATION

June 25, 2002

Mr. Marc Traasdahl, CPA
Manager, Airport Fiscal Services
Clark County Department of Aviation
P. O. Box 11005
Las Vegas, Nevada 89111-1005

RE: Property Insurance Policy UA864
Insured: Clark County Department of Aviation

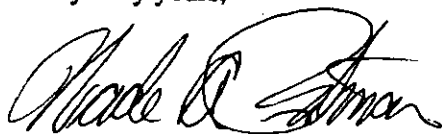
Dear Mr. Traasdahl:

The Factory Mutual Insurance Company, Johnston, Rhode Island ("FM Global") hereby provides notice that the referenced policy, issued to Clark County Department of Aviation, will not continue for another policy year. In accordance with Nevada law, all coverage will cease and terminate as of 12:01 a.m. standard time on the policy anniversary date of October 1, 2002. FM Global chooses to exercise its right to not enter into a contract for another year due to our determination that there is a fundamental divergence between our companies on issues relating to the provision and purpose of first-party property insurance as well as the application of material policy provisions.

Under Nevada law, you have the right to request information relating to the facts on which our decision to terminate coverage is based. Within six days of receipt of a written request from you, we will provide any such information accordingly.

The foregoing is our notice that FM Global will not continue to afford insurance coverage for your property as of the October 1, 2002 policy anniversary date.

Very truly yours,

A handwritten signature in black ink, appearing to read "Wade A. Pitman". The signature is fluid and cursive, with a large initial "W" and a stylized "P".

Wade A. Pitman, CPCU, ARM
Operations Vice President, Client Service Manager

cc: Mr. Lloyd W. Cutler, CPCU
Kellogg - Cutler Insurance Services
330 E. Charleston Blvd.
Las Vegas, Nevada 89104



RECYCLED PAPER MADE FROM 30% POST CONSUMER CONTENT

EXHIBIT “H”

LAS VEGAS



McCARRAN INTERNATIONAL AIRPORT

Department of Aviation

RANDALL H. WALKER

DIRECTOR

ROSEMARY A. VASSILIADIS

DEPUTY DIRECTOR

POSTAL BOX 11005

LAS VEGAS, NEVADA 89111-1005

(702) 261-5211

FAX (702) 597-9553

E-MAIL: rosemary.vassiliadis@clarkcountynv.gov

July 2, 2002

BY CERTIFIED MAIL: return receipt requested

7000 1670 0010 5285 5531

Jeffrey Casillas
Operations Vice President/
Los Angeles Operations Claims Manager
Factory Mutual Insurance Company
21860 Burbank Blvd., Suite 300
Woodland Hills, CA 91367

Re: Policy No.: UA864
NOTICE OF POLICY TERMINATION

Dear Mr. Casillas:

I was very disappointed to receive your "Notice of Policy Termination" dated June 25, 2002. As stated in your letter, under Nevada law, we have the right to request information relating to the facts on which your decision to terminate coverage is based. This letter is a formal written request for such information.

Sincerely,

Marc Traasdahl
Manager, Fiscal Services

cc: Randall H. Walker
Rosemary Vassiliadis
E. Lee Thomson
R. Ross Johnson

Mr. Lloyd W. Cutler, CPCU
KELLOG, CUTLER, YENCHEK, LADUKE, HOLMES INSURANCE SERVICES
330 E. Charleston Blvd.
Las Vegas, NV 89104

Mr. David W. Steuber
Partner
HOWREY, SIMON, ARNOLD & WHITE ATTORNEYS AT LAW
550 South Hope Street, Suite 1400
Los Angeles, CA 90071-2627



Clark County Board of Commissioners

Dario Herrera, Chairman • Myrna Williams, Vice Chair
Yvonne Atkinson Gates • Erin Kenny • Mary J. Kincaid • Chip Maxfield • Bruce L. Woodbury



RECYCLED PAPER MADE FROM 30% POST CONSUMER CONTENT

EXHIBIT “I”

FM Global

VIA FAX: (702) 597-9553

Factory Mutual Insurance Company
P.O. Box 9270 Van Nuys, CA 91409 USA
T: 818 704 1133 F: 818 883 0759 www.fmglobal.com

July 11, 2002

Mr. Marc Traasdahl
Manager, Fiscal Services
Clark County Department of Aviation
P.O. Box 11005
Las Vegas, Nevada 89111-1005

RECEIVED
McCARRAN INT'L AIRPORT

JUL 16 2002

ACCOUNTING OFFICE

3077

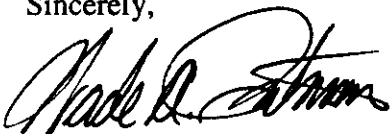
RE: Property Insurance Policy UA864
Insured: Clark County Department of Aviation

Dear Mr. Traasdahl:

This responds to your July 2 letter to Jeff Casillas (received by FAX and certified mail on July 8) requesting information relating to the facts on which FM Global based its decision to terminate policy coverage on the October 1, 2002 anniversary date.

Our June 25 termination notice refers to the fundamental divergence that exists between our organizations. FM Global's business philosophy leverages loss prevention expertise with significant financial capacity. We must underwrite risks that we fully understand in terms of quality, loss history, potential frequency, and potential magnitude. Moreover, as a mutual company, owned by our policyholders, we are obligated to use our resources in an efficient, economical manner. In our judgment, it is unlikely that any future insurance relationship with Clark County Department of Aviation could be mutually satisfactory. Therefore, we exercised our right to terminate the contract at anniversary, in accordance with Nevada law.

Sincerely,



Wade A. Pitman, CPCU, ARM
Operations Vice President, Client Service Manager

cc: Mr. Lloyd W. Cutler, CPCU
KELLOG , CUTLER, YENCHEK, LADUKE, HOLMES
INSURANCE SERVICES
330 E. Charleston Blvd.
Las Vegas, NV 89104

September 11, 2001 - The FAA Responds

Page 1 of



September 11, 2001

FAA Respo

From the takeoff of Flight 11 at 8:00 a.m. to U.S. airspace clear of civil aviation flights at 12:15 p.m., here are the times of key Sept. 11, 2001, events.

0800. American Airlines Flight 11, a Boeing 767 with 92 people on board, takes off from Boston Logan airport for Los Angeles.

Sept. 11, 2001 Hc

0814. United Air Lines Flight 175, a Boeing 767 with 65 people on board, takes off from Boston Logan airport for Los Angeles.

FAA Portraits

Hundreds of FAA pe
worked to improve
security and restore
aviation after the ski
were closed on Sept
2001. Here are some
their portraits.

Week of September
Week of September

0821. American Airlines Flight 77, a Boeing 757 with 64 people on board, takes off from Washington Dulles airport for Los Angeles.

0840. FAA notifies the North American Aerospace Defense Command's (NORAD) Northeast Air Defense Sector about the suspected hijacking of American Flight 11.

0841. United Air Lines Flight 93, a Boeing 757 with 44 people on board, takes off from Newark airport for San Francisco.

0843. FAA notifies NORAD's Northeast Air Defense Sector about the suspected hijacking of United Flight 175.

In Their Own Wo

Memories and thoug
from our employees.

0846. (approx.). American Flight 11 crashes into the north tower of the World Trade Center.

Week of September
Week of September
September 11
Week of September
September 18

0902. (approx.). United Flight 175 crashes into the south tower of the World Trade Center.

0904. (approx.). The FAA's Boston Air Route Traffic Control Center stops all departures from airports in its jurisdiction (New England and eastern New York State).

Clearing the Ski

Landing so many pla
so quickly was an
outstanding achieve
A series of articles in
Today explains the
behind-the-scenes
decisions and action

0906. The FAA bans takeoffs of all flights bound to or through the airspace of New York Center from airports in that Center and the three adjacent Centers - Boston, Cleveland, and Washington. This is referred to as a First Tier groundstop and covers the Northeast from North Carolina north and as far west as eastern Michigan.

0908. The FAA bans all takeoffs nationwide for flights going to or through New York Center airspace.

0924. The FAA notifies NORAD's Northeast Air Defense Sector about the suspected hijacking of American Flight 77. The FAA and NORAD establish an open line to discuss American 77 and United 93.

0926. The FAA bans takeoffs of all civilian aircraft regardless of destination - a national groundstop.

0940. (approx.). American Flight 77 crashes into the Pentagon.

0945. In the first unplanned shutdown of U. S. airspace, the FAA orders all aircraft to land at the nearest airport as soon as practical. At this time, there were more than 4,500 aircraft in the air on Instrument Flight Rules (IFR) flight plans.



September 11, 2001 - The FAA Responds

Page 2 of 2

1007. (approx.) United Flight 93 crashes in Stony Creek Township, PA.

1039. Reaffirming the earlier order, the FAA issues a Notice to Airmen (NOTAM) that halts takeoffs and landings at all airports.

1215. (approx). The airspace over the 48 contiguous states is clear of all commercial and private flights.

Notes:

All times are Eastern Daylight. For UTC/Zulu/GMT, add four hours.

Flight departures are actual takeoff times, not scheduled or gate departure times.

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

COUNTY OF CLARK,
a political subdivision
of the State of Nevada,
on behalf of Clark County
Department of Aviation,

Plaintiff,

vs

CV-S-02-1258 KJO-RJJ

FACTORY MUTUAL INSURANCE COMPANY,

Defendant.

CERTIFIED

COPY

Thursday, April 22, 2004, 10:12 a.m.

Videotaped Deposition of BENEDICT L.
SLINEY, held at the offices of Federal
Aviation Administration, One Aviation Plaza,
Jamaica, New York, pursuant to Agreement,
before Elisabeth F. Nason, a Notary Public
of the State of New York.

JOB NO. 22155

www.attysweb.com

46 Corporate Park, Suite 100
Irvine, CA 92606

445 South Figueroa St., Suite 2950
Los Angeles, CA 90071

phone 877.955.3855
fax 949.955.3854



SARNOFF
Court Reporters and
Legal Technologies

A P P E A R A N C E S:

HOWREY SIMON ARNOLD & WHITE

Attorneys for Plaintiff

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Los Angeles, California 90071-2627

BY: DAVID W. STEUBER, ESQ.

STEPHEN V. MASTERSON, ESQ.

ROBINS, KAPLAN, MILLER & CIRESI LLP

Attorneys for Defendant

2800 LaSalle Plaza

800 LaSalle Avenue

Minneapolis, Minnesota 55402-2015

BY: SCOTT G. JOHNSON, ESQ.

FEDERAL AVIATION ADMINISTRATION

OFFICE OF REGIONAL COUNSEL

Attorneys for Federal Aviation

Administration

One Aviation Plaza, Room 561

Jamaica, New York 11434

BY: MARY M. MCCARTHY, ESQ.

1 THE VIDEOGRAPHER: This is the
2 videographer speaking, Bill Poznanski of
3 Sarnoff Reporting with offices in
4 California. The day is April 22, 2004. The
5 time is approximately 10:12 a.m. We are on
6 the record. We are at the offices of FAA
7 located at One Aviation Plaza, Jamaica, New
8 York 11434 to take the videotaped deposition
9 of Benedict Sliney in the matter of County
10 of Clark plaintiff, and Factory Mutual
11 Insurance Company, in the US District Court,
12 District of Nevada, CV-S-02-1258 KJO-RJJ.
13 At this point, I would ask counsel present
14 to audibly introduce themselves and who they
15 represent starting with the attorney taking
16 the deposition.

17 MR. STEUBER: Mr. David Steuber. I
18 represent the County of Clark, the plaintiff.

19 MR. MASTERSON: Steve Masterson, also
20 from County of Clark.

21 MR. JOHNSON: Scott Johnson from the
22 law firm of Robins, Kaplan, Miller & Ciresi
23 representing Factory Mutual Insurance
24 Company.

25 MS. MCCARTHY: I'm Mary McCarthy. I

1 represent the Federal Aviation Administration.

2 THE VIDEOGRAPHER: Please swear in the
3 witness.

4 B E N E D I C T L. S L I N E Y, called as
5 a witness, having been duly sworn by a
6 Notary Public, was examined and testified as
7 follows:

8 EXAMINATION BY

9 MR. STEUBER:

10 Q. Will you please state your full name
11 for the record?

12 A. Benedict L. Sliney.

13 Q. As we have introduced ourselves, I'm
14 David Steuber. We represent the County of Clark
15 and with me is my partner, Steve Masterson and at
16 the farther end of the table is Scott Johnson.
17 He represents Factory Mutual Insurance Company.
18 He will have an opportunity after I'm finished
19 with my questions to ask you a variety of
20 questions should he decide to do so. I just
21 wanted to basically explain the deposition
22 process to you. I understand you are a lawyer
23 and you probably know all of this already.

24 Let me explain a little bit for you
25 for purposes of the record. You have just been

1 sworn in. You are obviously under oath.

2 Although we are sitting in a comfortable setting
3 in the conference room, the oath carries with it
4 the same solemnity and seriousness as if you were
5 testifying in federal or state court.

6 Additionally, as you can see to my
7 right and your left, the court reporter is taking
8 down everything that is said in the deposition.
9 So I would ask you to follow a couple of ground
10 rules with me and I will try to do the same in
11 terms of speaking audibly, letting one person
12 speak at a time and not stepping on someone's
13 lines so to speak. The court reporter can only
14 take down the comments of one person at a time.

15 You are also being videographed here.
16 You are sort of under the camera so to speak.
17 You will have an opportunity at the end of the
18 deposition obviously once the court reporter has
19 put together a transcription of the deposition,
20 an opportunity to review the deposition
21 transcript and make whatever changes or
22 corrections or modifications that you feel are
23 appropriate. We will have an opportunity,
24 Mr. Johnson, Mr. Masterson and I have, will have
25 an opportunity to comment upon any changes that

1 you make, so that could affect your credibility
2 to the extent we would need this at the time of
3 trial.

4 I guess the last thing I would simply
5 comment is that if you don't understand a
6 question, certainly feel free to stop me, ask me
7 to repeat it, rephrase it so that you can
8 understand it. What we want today is your best
9 recollection, your best testimony in response to
10 questions that you understand. If you don't
11 understand, let us know. Having said all of
12 that, I want to also repeat for Ms. McCarthy as
13 well that I understand you are a lawyer, we are
14 not here to ask you for a legal opinion. We are
15 not here to ask you for contract interpretation.
16 We are not here to ask you for any opinion either
17 for that matter. We are trying to get at the
18 facts like Joe Friday on Dragnet, that's
19 hopefully all I'm going to be asking and all I
20 intend to ask. Do you have any questions?

21 A. I do not. That was very clear.

22 Q. What I would like to do is start by
23 asking you about your background, start with
24 where you went to college and we can proceed from
25 there.

1 A. The relevant portion of it would begin
2 before I went to college. I joined the Air Force
3 in 1964 as an air traffic controller from 1964 to
4 1968. I was discharged from the Air Force
5 honorably and hired by the Federal Aviation
6 Administration in February 1969. I continued my
7 career as air traffic controller with the Federal
8 Aviation Administration.

9 It was during my tenure as air traffic
10 controller at the New York common instrument
11 flight rules room that I finished my
12 undergraduate and attended St. John's University
13 School of Law to obtain my graduate degree during
14 my tenure as air traffic controller.

15 Q. When did you graduate from St. John's
16 Law School?

17 A. 1978. I resigned from the agency in
18 1982 following the strike, not over the strike,
19 but a year after the strike. Essentially in
20 2000, when I retired from law and took a position
21 with the Federal Aviation Administration at the
22 air traffic control system command center in
23 Herndon, Virginia, since that time, I have
24 transferred to New York to be with my family, I
25 should add. My grandchildren notably. My wife

1 of course I had with me.

2 Now I'm employed here in New York as
3 an operations manager at the New York Terminal
4 Radar Approach Control Facility.

5 Q. Let me ask a couple of questions about
6 that. That's a lot of information. You were an
7 air traffic controller with the FAA from 1969
8 until 1982?

9 A. Yes, and then in again in 1986 --
10 excuse me, that would be 1985 to '86, then in
11 1988, I worked for them. In 1990, I worked for
12 them. I did both jobs. I was an attorney and
13 was an air traffic controller, maintained my
14 offices during that span from 1978 through today,
15 actually until 2000 when I retired from the law
16 completely.

17 Q. When you went back with the FAA, you
18 resigned in 1982, then you went back to be an air
19 traffic controller in 1985, '86?

20 A. Yes.

21 Q. Then again in 1988?

22 A. Yes.

23 Q. Then again in 1990?

24 A. Yes.

25 Q. In the entirety of that time frame,

1 were you an air traffic controller in the New
2 York area?

3 A. Yes.

4 Q. Particular airport?

5 A. The New York TRACON, which is an
6 acronym for the terminal radar approach control,
7 supplies or provides radar air traffic control
8 services for the entire metropolitan area, which
9 covers most of New Jersey, portions of
10 Connecticut, all of New York and expanded area of
11 air space that would include all major airports
12 in this area. I was always employed at that
13 facility in the span we are talking about.

14 Q. You retired from the law in 2000. I
15 didn't pick up when you went to the air traffic
16 control command.

17 A. In July 2000, I went to Virginia and
18 was employed at the air traffic control systems
19 command center.

20 Q. Where is Herndon located?

21 A. Due west of Washington, about 15 miles.

22 Q. To be an air traffic controller, did
23 you have to take an examination, is there any
24 certification for that?

25 A. The initial training began in the Air

1 Force where I got technical training with intense
2 schooling for four months I believe. Once I get
3 rolling -- it began in the Air Force where I
4 received intensive training as air traffic
5 controller. Then worked in various air traffic
6 controller facilities where you were trained on
7 the job by someone who is qualified until you are
8 qualified in the accumulation of facilities, adds
9 to the breadth of your knowledge.

10 Then in a similar situation in the FAA
11 when I was hired by them, they sent me to
12 Oklahoma City to the academy for a six month
13 period for education and training. When I
14 graduated from that facility, I reported to an
15 air traffic controller facility that I began the
16 on-the-job process that I described to you
17 earlier, qualified and then moved on to other
18 facilities.

19 Q. What we are talking about now in terms
20 of going to the six month academy, that would
21 have been in 1969?

22 A. Yes.

23 Q. You went to Oklahoma City. From the
24 academy, you graduated from the academy and
25 thereafter went to on-the-job training?

1 A. Yes. At the facility, you receive
2 general training like a lawyer and then you go
3 into the specialty, air, either approach
4 control. It would be an air traffic control
5 tower or a radar approach control or an air route
6 traffic control center.

7 Q. Were you qualified with respect to
8 each one of those three areas?

9 A. No, I stayed in the terminal option,
10 which does not involve the air route traffic
11 control center. The rest I was qualified in and
12 radar approach control.

13 Q. That would be the air traffic
14 controller tower and the radar approach?

15 A. Control, yes.

16 Q. You were certified in both of those
17 areas, is that the proper way of putting it?

18 A. Yes, correct.

19 Q. When in 2000 did you retire from the law?

20 A. In July 2000, I closed up my law
21 practice. It took probably two more years to
22 actually close down the business as I'm sure you
23 understand, everything doesn't end on the day you
24 select, so I kept my offices open for two years
25 after that, but once I reported to the Federal

1 Aviation Administration, I had at that point
2 either given all my cases to someone else, my
3 partners had taken them over and I reported to
4 the FAA, so I was done with the law at that point.

5 Q. You basically were retired from the
6 law in July 2000 and pretty much immediately
7 reported to the FAA?

8 A. Yes, sir. They were gracious enough
9 to give me a month vacation at the outset of my
10 tenure with the Federal Aviation Administration
11 and we went to Europe and enjoyed ourselves.

12 Q. If you can describe for us, what area
13 of the law did you practice or what areas of the
14 law did you practice?

15 A. I pretty much did anything, but I
16 didn't do divorce and I didn't do criminal after
17 a few skirmishes in those areas. Essentially my
18 practice evolved around securities and
19 commodities and a brokerage house was my main
20 client. I practiced in all the federal courts,
21 and on the exchanges, the NASD, before the SEC,
22 the AMEX, in various Wall Street entities.

23 Q. In July 2000 when you were employed by
24 the FAA in the air traffic controller command
25 center in Herndon, Virginia, what was your title,

1 what was your position?

2 A. I was a traffic management specialist.

3 Q. What responsibilities did you have as
4 a traffic manager specialist?

5 A. Traffic management is a process
6 whereby traffic is regulated so as to comply with
7 the capacity of the system. We look at all the
8 traffic in America and where it wants to go and
9 the route it wants to travel and we essentially
10 speed control those routes to allow as many
11 aircraft as we need or can accommodate into the
12 area that may be under some type of constraint
13 such as weather, sheer volume or any other type
14 of closure or any event that would reduce the
15 capacity of the air traffic system, the national
16 air traffic system. That's what traffic
17 management provides.

18 Q. How long did you serve as traffic
19 management specialist?

20 A. I would say it was not many months.
21 Maybe six, seven, maybe 10 months, sometime
22 before September -- I could tell you exactly. It
23 would have been until roughly July of 2001, so
24 about a year.

25 Q. What position did you assume after

1 July 2001?

2 A. I became a national operations manager.

3 Q. You held that position on September
4 11, 2001?

5 A. I did.

6 Q. Can you compare for us your
7 responsibilities as an air traffic controller and
8 your position as traffic management specialist?

9 A. It would be a matter of scope. A
10 national air traffic controller is concerned with
11 the immediacies of keeping aircraft at the
12 required separation and managing that air traffic
13 to and from an airport.

14 Q. On a localized basis?

15 A. On an actual real time basis talking
16 to the airplane. The traffic management has
17 tools at its disposal, which look at all the
18 aircraft coming from all the systems. Typically
19 a radar controller only looks at 30, 20 miles of
20 air space. As you get into the air route traffic
21 control center, I may look at 100 miles of air
22 space, but we are charged with the entire
23 national air space system and regulating that and
24 we look at the entire country including overseas
25 flight. We have a system that depicts every

1 flight that is flying now at any time.

2 Q. Is that also real time?

3 A. Yes, it's one minute updated. It's an
4 amalgamation of all the air traffic control
5 center radars in the nation and I look at a
6 mosaic of that.

7 Q. It was a bigger picture of what you
8 would do as air traffic controller?

9 A. The big picture, exactly right. It's
10 a matter of scope scaling down from there
11 preceding right down to the person who says clear
12 to land.

13 Q. You were a national operations manager
14 from July 2001 around until when?

15 A. Until I think the end of that year,
16 probably December or January, I will say January '02.

17 Q. Then what position did you take?

18 A. Then I was a division manager for
19 tactical operations. In other words, I was then
20 in charge of the national operations managers, I
21 was put in charge of the entire facility, the air
22 traffic control system command center.

23 Q. In early '02, you took over the full
24 responsibility of overseeing the air traffic
25 controller system command center in Herndon?

1 A. Yes.

2 Q. Which would include oversight of all
3 the national operations managers?

4 A. Correct.

5 Q. How many national operations managers
6 were there in this time frame of 2001, 2002?

7 A. There were five.

8 Q. How were the responsibilities among
9 those five national operations managers broken
10 down, was it by geographical area or a matter of
11 whoever was on a particular shift at a particular
12 time?

13 A. The national operations manager has
14 complete authority over the national air space
15 system during the time that he or she is on
16 duty. Usually one is on duty at any given time.
17 If there are two, one is designated as in charge.

18 Q. How long did you hold the position as
19 division manager for tactical operations?

20 A. Probably about seven, eight months.

21 Q. That would take you perhaps into the
22 fall, late 2002, something like that?

23 A. Yes.

24 Q. Is that when you then left the command
25 center and moved back to New York?

1 A. Yes.

2 Q. When you left the command center, what
3 position did you assume here in New York?

4 A. At this building, I was the 520, which
5 is the branch manager for air space and
6 procedures. I may be off on the exact
7 nomenclature, but that's the gist of it.

8 Q. What were your responsibilities in
9 that position?

10 A. That would be like the R and D of air
11 traffic control, research and development. We
12 look at ways to improve the existing system.

13 Q. How long did you hold that position?

14 A. Thankfully briefly. They were
15 gracious enough to allow me to return to the New
16 York TRACON where I wanted to go in the first
17 place despite the odyssey to Virginia. I was
18 there given the position of the operations
19 manager at the New York TRACON and the term
20 national radar approach control. There are seven
21 operations managers there. He or she is
22 responsible for the air traffic operations in the
23 entire New York area for their assigned shift,
24 similar to the structure that I described in the
25 command center.

1 Q. You have held that position of
2 operations manager at New York TRACON for how long?

3 A. That would be since January or February
4 of '03.

5 Q. That's the current position you hold today?

6 A. Yes, sir.

7 Q. In your position as operations manager
8 for New York TRACON, do you report to someone?

9 A. I do.

10 Q. To whom or what position do you report to?

11 A. I report to the manager of the facility.

12 Q. That would be a division manager as well?

13 A. No, the structure is different. It is
14 a unique facility the command center. It's
15 virtually autonomous and controls the entire
16 country. The New York TRACON is in a structure
17 in the eastern region and there is a manager of
18 the facility who reports to a division manager
19 here in the region and I report to the manager of
20 that New York TRACON.

21 Q. Let me return now to September 11,
22 2001. Your job title on September 11, 2001 was
23 national operations manager?

24 A. That is correct.

25 Q. You were one of five national

1 operations managers as of September 11, 2001?

2 A. Yes, but I was the one on duty.

3 Q. I understand that, yes. I believe you
4 said as national operations manager, you had
5 complete authority over the entire air traffic
6 system during your assigned shift?

7 A. Yes, to ensure the safe and efficient
8 operation of that system, that was my charge and
9 since September 11, they have added secure to
10 that charge, the safe, secure and efficient
11 operation of the national air space system.

12 Q. I believe in one article that I have
13 read, the person holding that position, the
14 national operations manager has been
15 characterized as quote, the chess master of the
16 air traffic system, close quote. Is that a fair
17 assessment do you believe?

18 A. I believe it's the product of hyperbole.

19 Q. In what respect?

20 A. It's not a game and the person in that
21 position on a day-to-day basis deals with fact
22 and does make moves, but it's not an active
23 on-going thing. It's more when intervention is
24 required. The system runs pretty well if you
25 leave it alone. It's hyperbole, but it's a nice

1 phrase. I read it.

2 Q. As national operations manager, during
3 your shift, were there any limits to your
4 authority?

5 A. No, not with respect to a lawful order
6 given to ensure the safe and efficient operation
7 of the national air space system.

8 Q. In other words, would it be fair to
9 say that as events occurred or were occurring
10 during your shift, whatever day it would be,
11 September 11 or any other day for that matter,
12 you had complete authority subject only to
13 subsequent review or approval from someone over
14 you?

15 A. I was expected to exercise my good
16 judgement to assure that mandate that I described
17 to you, the safe and efficient operation of the
18 NAS, I would do whatever was necessary to
19 accomplish that. In hindsight, could I be
20 criticized. I suppose I could. That has not
21 happened to me maybe by chance or maybe because
22 the application of thought to fact usually
23 produces very few incorrect results and that's
24 what usually happens in that situation.

25 Q. During your shift, you were the guy on

1 the line?

2 A. Correct.

3 Q. On September 11, 2001, to whom did you
4 report?

5 A. My immediate superior was at that time,
6 Linda Scheussler.

7 Q. She was the division manager at the time?

8 A. Correct, the subsequent position that I
9 occupied.

10 Q. That was my next question. She was
11 the division manager when you were the national
12 operations manager and then you subsequently in
13 early 2002, give or take, that's when you assumed
14 division manager?

15 A. That's correct.

16 Q. In your position as national
17 operations manager, who reported to you, did anyone?

18 A. All the employees on an assigned
19 shift. That would be those traffic management
20 specialists and supervisors in the -- assigned to
21 the east, which is the division of various areas
22 of the country, generally in the eastern portion
23 and in the west. There is a supervisor for the
24 west and 10 to 15 specialists working for that
25 person. There is a supervisor in the east, 10 to

1 15 persons working for that person. There is a
2 unit called severe weather that involves
3 rerouting air traffic around weather or other
4 obstructions to the structure. That would be
5 another 10 to 12 people there. There is also
6 something we call the special planning TELCON
7 group that every two hours conducts a telephone
8 conference with all the major airlines and
9 facilities in the nation. So about 50 people.

10 There are additional elements in
11 there. There is the national business aircraft
12 association, NBAA. They have a desk in there.
13 There is the airline pilots, the airlines
14 maintain a desk in there. There is a military
15 liaison that connects us to the military in that
16 building, ostensibly reporting to me on an
17 assigned shift we are going through. There are
18 all the support elements, the technician, that's
19 repair. There is a weather unit that provides up
20 to date meteorology in the entire country. There
21 is a NOTAM outfit also that issues notices to
22 airmen.

23 Q. All of these people you are talking
24 about were in the command center?

25 A. Were in that room.

1 Q. I was going to get into that in a
2 moment or two about the command center itself and
3 the room and the physical qualities of that.
4 What I'm interested in now is the hierarchy if
5 you will, on your shift. There were a number of
6 traffic management specialists and how were
7 responsibilities divided among those traffic
8 management specialists?

9 A. The responsibilities are divided up on
10 a geographical basis. There is a -- for example,
11 in the east, there is a New York position that
12 generally handles the New York airports. There
13 is a south position that handles Atlanta,
14 Jacksonville and Miami. There is a position that
15 works Cleveland and Boston. I'm talking about
16 not airports -- when I say those cities' names,
17 I'm talking about air route traffic control
18 centers, each of them whom have several thousand
19 miles of air space. So the entire nation is
20 divided up into specialists who operated areas
21 that are contiguous to each other, Boston and
22 Cleveland abut, Washington and DC abut, Atlanta,
23 Jacksonville and Miami are all connected
24 somehow. Houston, Memphis. Goes across the
25 country, Los Angeles. All the centers are

1 divided up to a specialist, who handles traffic
2 management specialties for that airport.

3 Q. On September 11, 2001, how many
4 traffic management specialists would be on duty
5 during your shift?

6 A. There would be approximately 25 to 30.

7 Q. Those 25 to 30 would each have a
8 separate geographic area or would there be
9 multiple traffic management specialists
10 responsible for a particular area?

11 A. A person who is qualified to work in
12 the east, is qualified to work any of the
13 positions in the east. Whether it be Boston,
14 Cleveland or New York, Washington or Atlanta,
15 Jacksonville, Miami, they would be qualified to
16 work all those positions. They would be rotated
17 through all those positions for relief breaks,
18 lunch. They would be rotated in the west.
19 Similarly they are divided geographically and the
20 specialists are all qualified to work in the
21 west. The severe weather unit wouldn't do that
22 type of activity, although qualified to do so.
23 They concern themselves with looking at routes
24 across the country and adjusting clearances of
25 aircraft to put them on the routes we want them on.

1 Q. At this time what I would like to do
2 is actually start going into some of the
3 specifics of what happened on September 11, 2001
4 and ask you a variety of questions about some of
5 the specifics. On the morning of September 11,
6 you reported to work?

7 A. I did.

8 Q. What time did you report?

9 A. I typically arrived at around 6 a.m.

10 Q. On September 11, did you arrive at or
11 about 6 a.m.?

12 A. That's my recollection, yes.

13 Q. You reported to the command center in
14 Herndon, Virginia?

15 A. Yes.

16 Q. On September 11, did you have an
17 assigned shift from X time to Y time?

18 A. I had the day shift, which would be
19 roughly 7 to 3.

20 Q. Can you recall when you left the
21 command center on September 11?

22 A. I left near midnight on that day.

23 Q. Were you physically present at the
24 command center all day on September 11?

25 A. Yes.

1 Q. At this point you have described in
2 part the command center. What I would like to do
3 now is maybe go into a little more depth just in
4 terms of the physical aspects of the structure
5 itself. Was it a single room for example?

6 A. Yes.

7 Q. How big of a room were we talking
8 about?

9 A. It's about 40 hectares -- no. It's
10 probably 100 by 40 with a 25 foot ceiling.

11 Q. When you are talking about 100 by 40?

12 A. Feet. It's broken up with operating
13 consoles arranged in a logical order for people
14 to work together. On the walls of the room are
15 seven screens, 10 feet by 12, which I can display
16 images on. Typically the images concern areas of
17 the country, weather or air route traffic that we
18 are looking at. One would always have weather,
19 know the status of the entire air space system.
20 On those screens would be displayed that
21 information.

22 Q. On September 11, how many people were
23 in the command center in that one room that we
24 are talking about?

25 A. Including the airways facilities unit,

1 over which I didn't exercise authority except to
2 direct repair of some component, they report to
3 their own system supervisors, airway facilities.
4 There were probably 20 of those individuals and
5 including contractors, which we hire to sustain
6 computer systems and programs. I would say there
7 were probably 50 to 60 people on that floor and
8 the various elements I described to you earlier,
9 the National Business Aircraft Association, the
10 airline desk. There is a flight check, there are
11 a lot of people in there that report to me or
12 have access to and reports to me for anything
13 that affects the NAS, the national air space
14 system.

15 Q. The total, all those groupings was about
16 50 to 60 people?

17 A. That would be my best guess.

18 Q. Out of those 50 to 60, that would
19 include the 25 to 30 traffic management specialists?

20 A. Yes. Well, that figure would be closer to
21 40, including the supervisors who reported to me also.

22 Q. On September 11, did the physical
23 layout of the command center differ from what I
24 will compare to a normal day?

25 A. No, not different.

1 Q. The configuration was all the same on
2 September 11?

3 A. At the outset.

4 Q. Did it change during the course of the day?

5 A. It did. Not the configuration, but
6 the -- after the airline crashes occurred into
7 the buildings, Ms. Scheussler came out and
8 indicated that she would organize the staff
9 elements to assist me in the operational elements
10 in any way that I required. Pretty much freed up
11 my desk duties so that I could occupy a position
12 in the middle of the operating floor with the
13 operational elements reporting to me on a real
14 time basis and as often as necessary while
15 Ms. Scheussler operated staff elements to assist
16 that process. There were additional 30 people
17 probably on the floor after this process began
18 that I just described to you.

19 Q. In terms of comparing the
20 responsibilities, Ms. Scheussler basically was
21 responsible for organizing the operational
22 aspects of the command center to free you up to
23 basically run the national air space?

24 A. She actually has authority over all
25 the elements, including the part I was

1 operating. However, on that day when these
2 events began to unfold, she stated to me that I
3 did not have to -- I could relinquish those
4 duties that involved the telephone essentially
5 and interfacing with other entities, to
6 concentrate on the operation and that she would
7 organize the staff elements to allow me to do so.

8 For example, I had staff individuals
9 who tracked all aircraft who were deemed to be
10 suspicious, which at that point, meant anyone we
11 were not talking to. They kept that data on the
12 old grease board, like a school teacher's
13 portable chalk board and that was staffed by
14 staff elements who got the data from the
15 operational specialists.

16 Q. On a normal day, would Ms. Scheussler
17 as the division manager, would she have normally
18 been on the floor?

19 A. No, she was not on the floor that much
20 that day, but enough to tell me those things,
21 that she would be organizing that and then I saw
22 her periodically throughout the day and evening.

23 Q. But during the course of September 11,
24 it was your responsibility to oversee the safe,
25 secure and efficient operation of the national

1 air space?

2 A. The safe and efficient was the mandate
3 prior to 9/11, but certainly that was the mandate.

4 Q. That was your responsibility on
5 September 11?

6 A. That was my responsibility, yes.

7 Q. Were there TV screens on the command
8 center on September 11?

9 A. The screens I described to you
10 earlier. I could display CNN or any other signal
11 I wanted to on all of them.

12 Q. Those were the seven screens you
13 mentioned?

14 A. Yes, they pretty much gird the room,
15 you know, across one wall at one and a half
16 walls.

17 Q. I think you said those screens were 10
18 by 12?

19 A. Yes.

20 Q. On September 11, were any of these
21 screens turned to a particular station, was it
22 turned to CNN for example?

23 A. Not until the report of an aircraft
24 hitting the World Trade Center.

25 Q. That would be the first crash into the

1 tower?

2 A. Yes, sir. At that point, I put CNN on
3 two of those screens so they were visible by the
4 east and the west and any other elements.

5 Q. After the first crash into the World
6 Trade Center towers, you switched two of the
7 screens to CNN?

8 A. Correct. I didn't do that. I
9 directed it.

10 Q. Is it fair to say that like the rest
11 of America, you were watching the events of 9/11
12 as they happened after that first crash?

13 A. Absolutely.

14 MR. STEUBER: At this time, I would
15 like to show you a document that I would ask
16 to have marked as Exhibit 1. This is a
17 chronology, a time line for September 11
18 that we obtained from and copied from the
19 FAA website. If you could just take a quick
20 look at that.

21 (Exhibit 1, time line, marked for
22 identification, as of this date.)

23 (Hanging.)

24 Q. Have you seen that time line before or
25 time line like that before?

1 A. I have not seen this time line
2 before. I have seen the exact time line that
3 concerns the events that I was engaged in. This
4 includes other matters that are not within my
5 purview.

6 Q. As best as you can tell from the
7 events that you were involved with, is it a fair
8 and accurate assessment, Exhibit 1?

9 A. Yes, it is. Times are approximately
10 correct.

11 Q. During the course of my questions from
12 time to time, I will be asking you questions
13 relying on this as somewhat of a road map to give
14 us a sense of where I'm going. Exhibit 1
15 indicates that at 8:46 a.m. approximately on
16 September 11, American flight 11 crashes into the
17 north tower of the World Trade Center. To the
18 best of your recollection, is that an accurate
19 statement?

20 A. Yes, as it says approximately.

21 Q. Yes, approximately. It was after this
22 crash at or about 8:46 a.m. that you switched two
23 of the screens to CNN?

24 A. At first, no one knew if that was
25 American flight 11 that hit the Trade Center. We

1 knew a plane had hit the Trade Center. We knew
2 there were high-jackings. We knew that American
3 11 disappeared from our radar coverage and we
4 couldn't track him. When the report came from
5 one of the specialists that an aircraft had
6 struck the World Trade Center, we do have CNN on
7 my desk, the national ground stop desk on
8 television. I had them put that on and they were
9 depicting that image of smoke pouring from the
10 side of the Trade Center. I had that put on two
11 of the screens and CNN was reporting that a small
12 plane had struck the command center. It was our
13 respective opinions looking at it, that it was
14 not a small plane and, of course, I feared it was
15 American 11.

16 Q. You had said I believe that it was
17 your fear that it had struck the command center.

18 A. Misspoken. I did misspeak. I said
19 command center. I meant Trade Center. It's all
20 those centers.

21 Q. Let me also ask in terms of your
22 shift, you mentioned you had a desk, a national
23 operations manager desk with your own TV screen,
24 during a normal shift and I will distinguish a
25 normal shift from what happened on 9/11, but on a

1 normal shift, would you normally be sitting most
2 of your shift or would you be sort of walking
3 about the facility, the center room itself?

4 A. I would be walking about the facility
5 constantly. That may differ from manager to
6 manager, but I like to know everything that is
7 going on at all times.

8 Q. On September 11, I assume you didn't
9 spend much time sitting at your desk?

10 A. Typically I don't and certainly that
11 day I didn't. I spent no time at my desk.

12 Q. Were you on the floor so to speak,
13 were you at the command center when you first
14 learned that a plane had hit the north tower?

15 A. Yes, I was there from 6 a.m. until
16 about midnight.

17 Q. How did you first learn that a plane
18 had crashed into the north tower of the World
19 Trade Center?

20 A. That was communicated to me by someone
21 on my staff.

22 Q. One of the traffic management
23 specialists?

24 A. Yes, either that or a supervisor or
25 someone made us aware that a plane -- we monitor

1 CNN news because you get the most up to date news
2 first from them. Even often before your own
3 components in the field report to you, you may
4 find out something from CNN. Whoever was
5 monitoring at that time, indicated that we put it
6 on the screens. I withdraw that. I believe it
7 was the military liaison who came out to tell me
8 that CNN was showing an aircraft that crashed
9 into the World Trade Center. It was he and I
10 that had that conversation regarding our belief
11 that that was no small plane despite the report
12 on CNN.

13 Q. It was your belief that it was
14 American flight 11 although at that time, it had
15 not been confirmed?

16 A. It had not been confirmed and to be
17 frank, I found it hard to believe because I
18 couldn't conceive of an airline pilot
19 deliberately crashing a plane into a building,
20 even if the high-jacker had a gun to his head, he
21 would have ducked into the East River, the
22 Hudson. He wouldn't do that. Those people
23 wouldn't do that. So I didn't believe it was
24 American 11, but I feared it was because of the
25 size of that crash when I saw it. That was the

1 perplexing part of it at least in my mind.

2 Q. You mentioned military specialists.
3 Were there military specialists in the room on
4 September 11 prior to the first crash?

5 A. They are stationed there at all times.

6 Q. In the room actually itself?

7 A. They are in a secure room that has a
8 cypher lock, a lock to get in there, because in
9 that room, we do work of a nature that is
10 secret. They came from that room and stayed on
11 the floor for the day. There are several
12 lieutenant colonels, they are all officers, men
13 and women also. There was a military liaison
14 present on the floor from the time of that crash
15 to my recollection, for the entire day.

16 Q. When did you first see television
17 footage of a plane crashing into the towers?

18 A. You mean the second plane that hit?

19 Q. Either the second plane or was there
20 footage of the first plane you saw?

21 A. No, it was not on that day I saw a
22 picture, I don't recall that. I wasn't looking
23 at that screen. The second one they showed over
24 and over again and I finally at one point shut it
25 off because it was causing upset among a lot of

1 the personnel to see that plane continually run
2 into the trade center, the second aircraft.

3 Q. As to the first crash, you picked up
4 the TV screening, the TV footage if you will,
5 after the plane had already hit and you saw the
6 smoke coming from the north tower of the World
7 Trade Center?

8 A. Correct.

9 Q. On Exhibit 1, right below the last
10 entry that we looked at, it indicates that at
11 approximately 9:02 a.m., United flight 175
12 crashes into the south tower of the World Trade
13 Center. To the best of your recollection, is
14 that an accurate statement?

15 A. That is.

16 Q. You were still on the floor obviously
17 at the command center when that happened?

18 A. I was.

19 Q. Did you actually see the United flight
20 175 hit the south tower?

21 A. As depicted on television, yes.

22 Q. You were watching one of those two big
23 screens that we were talking about earlier?

24 A. It was there for me to watch. Was I
25 watching it, I don't believe so. My attention

1 would be called to it and I don't know if I saw
2 it on the first one, but I believe I did. It's
3 hard to recall exactly. They showed it so many
4 times, that's what I'm saying. I believe I saw
5 it when it happened, at least as depicted on
6 television.

7 Q. You were watching it with others in
8 the command center as well?

9 A. There are duties, there are activities
10 going on in the fulfillment of those duties, so
11 to the extent that they are able to see the
12 television screen, it's hard to avoid. They are
13 the size of a small movie screen and they are
14 well-lit in a very visible place up on the wall.
15 So most people would probably have half an eye on
16 that.

17 Q. Exhibit 1 indicates that at 9:26 a.m.,
18 the FAA bans all takeoffs. Sorry.

19 A. That's correct.

20 Q. The FAA bans takeoffs of all civilian
21 aircraft regardless of destination, a national
22 ground stop. To the best of your knowledge, at
23 or about 9:26 a.m., did such a ground stop order
24 get issued by the FAA banning takeoffs of all
25 civilian aircraft regardless of destination?

1 A. Yes, at or about that time. I'm only
2 quibbling on the exact time because to be frank,
3 the exact time is recorded. However, I would
4 have to look at that in my notes on that. I
5 don't have any notes with me, but that seems
6 about correct. It was following the second crash
7 into the Trade Center is how it's in my mind.
8 After the second crash in the Trade Center, I
9 ordered the national ground stop.

10 Q. That was my next question. Did you
11 issue the initial national ground stop order at
12 approximately 9:26 a.m. on 9/11?

13 A. Yes. Just so you understand the
14 nexus, a ground stop is a traffic management
15 tool. A ground stop can be of varying scope. It
16 can be that we just ground stop Los Angeles or we
17 ground stop a bigger section, so on, so forth.
18 Specialists with their first line supervisors
19 concurrence, have the authority to ground stop
20 any segment of the NAS. No one had ever issued
21 nor had there ever been a reason for a national
22 ground stop. That's why that is noteworthy.
23 That's why it had to come from me.

24 Q. That order, the national ground stop
25 order, was unprecedented in the sense that it had

1 never happened before?

2 A. Correct. The national operations
3 manager is informed of all traffic management
4 initiatives such as ground stop, but it takes the
5 form usually that a specialist determines the
6 need for it in concurrence with the other
7 elements, including the airlines and the
8 facilities. He or she communicates their
9 attention to the first line supervisor who
10 mentions it to me. In other words, they have the
11 authority, but it travels up the line. In this
12 case, it emanated, the national ground stop, from
13 the national operations manager on that day.

14 Q. Which was you?

15 A. Yes, sir.

16 Q. Did anyone direct you to issue that
17 national ground stop or did you issue it on your
18 own authority?

19 A. I don't like those two choices. No
20 one directed me to issue that national ground
21 stop, no one did.

22 Q. You issued it on your own?

23 A. I issued it on my own authority.
24 That's somewhat -- the reason I said I didn't
25 like that choice is because I listened to and I

1 have available to me the accumulated wisdom and
2 advice of all those specialists. We regularly
3 met on that day to discuss alternatives and what
4 we should do. When it became apparent that there
5 were essentially missiles flying around, we
6 decided to -- we stopped aircraft from taking off
7 first. We did that in a series of movements that
8 are somewhat depicted here. First we stopped New
9 York. Then we stopped Boston. Then we
10 stopped -- although I don't see it here, we
11 stopped Los Angeles because of the connection
12 with the Los Angeles flights to be sure we
13 stopped everything out there. Then we stopped
14 almost the whole east coast and then the national
15 ground stopped. The to or through orders are
16 pretty comprehensive and the center says it
17 doesn't want traffic to or through its air space,
18 meaning all flights that want to go to the New
19 York metropolitan area in the New York case and
20 all flights that wish to traverse that air space
21 such as every international flight that would
22 come west from that position, would have to go
23 through New York air space to go overseas.

24 Q. Was it within your authority to issue
25 this national ground stop order?

1 A. Absolutely.

2 Q. What did you personally do to issue the
3 order, did you tell someone? Mechanically what did
4 you do to issue the national ground stop order?

5 A. I called my supervisors together and
6 told them to stop ground -- stop all aircraft
7 regardless of destination.

8 Q. They communicated that?

9 A. To the specialists at first verbally
10 to every center in the country. The specialists
11 has at his or her disposal, communication
12 consoles that can connect them with almost the
13 entire country at a fingertip. They were
14 directed verbally to shut down the system, ground
15 stop everyone and that was followed up by an
16 advisory that is communicated electronically.

17 Q. It's communicated to whom electronically?

18 A. To all the air route traffic control
19 centers in the nation who then further
20 disseminate that order to all the facilities
21 under their jurisdictions.

22 Q. Somehow it would get to all the
23 aircraft and all the airports as well?

24 A. Correct, correct. It would follow
25 that process I just told you. It follows one

1 thread to go to the command center to the New
2 York center to the Kennedy tower to the aircraft
3 or approach control to the aircraft, depending on
4 the location of the plane.

5 Q. Did you advise Ms. Scheussler that you
6 had issued the national ground stop order?

7 A. Not to my recollection. I certainly
8 would have briefed her if I saw her come on to
9 the floor as to what was going on. I would keep
10 her apprised of everything that was going on both
11 in my mind and actually.

12 Q. But you didn't consult with her prior
13 to issuing that order?

14 A. I didn't.

15 Q. Was your decision to order the
16 national ground stop order the product or result
17 of the crashes of American flight 11 and United
18 flight 175 into the World Trade Center towers?

19 MR. JOHNSON: Objection. Vague,
20 ambiguous. Mischaracterizes prior testimony.

21 Q. You can answer.

22 A. The second crash prompted me to do
23 something more than we had done and that was -
24 essentially it was the first and -- the second
25 crash, the accumulation of those events and all

1 events on-going. That is to say certainly in my
2 mind with the number of aircraft we had on that
3 status board I told you about earlier. There
4 were varying amounts of planes on there, anywhere
5 from 10 to 12 as communications were lost from
6 them or they were on routes that they should not
7 have been on, all those were suspicious. The
8 accumulation of that certainly was in my mind.
9 The second crash was the impetus for me to issue
10 the national ground stop order.

11 Q. Exhibit 1 further indicates that at
12 approximately 9:40 a.m., American flight 77
13 crashes into the Pentagon. Again, to the best of
14 your recollection, is that an accurate statement?

15 A. Yes, it did crash into the Pentagon
16 American flight, time again. My notes says 43,
17 but it's close enough.

18 Q. Again, you were at the command center
19 when the crash happened?

20 A. Correct, yes.

21 Q. Did you learn of the crash pretty much
22 concurrent with it happening?

23 A. I was informed -- I had to be informed
24 of it because I took action following that,
25 following the information of the aircraft crash.

1 Q. Exhibit 1 next indicates that at 9:45
2 a.m., quote, in the first unplanned shutdown of
3 US air space, the FAA orders all aircraft to land
4 at the nearest airport as soon as practical. At
5 this time, there were more than 4,500 aircraft in
6 the air on instrument flight rules IFR flight
7 plans, closed quote.

8 To the best of your recollection, on
9 or about 9:45 a.m., was such a shutdown ordered
10 directing all aircraft to land issued by the FAA?

11 A. Yes.

12 Q. Again sir, did you issue the initial
13 order shutting down the national air space on
14 approximately 9:45 a.m. on September 11?

15 A. Yes.

16 Q. Did you issue that order much as you
17 did with respect to the ground stop order that
18 you just testified about, in terms of the
19 consultation with your supervisors, your air
20 traffic specialists, get input from them and then
21 you made the decision?

22 A. Yes. Well, in this instance, we had
23 discussed -- prior to American 77 crashing into
24 the Pentagon, we had discussed -- by we, I mean
25 the people I called together in the middle of the

1 floor, which would have not only been my
2 specialists and supervisors, but the military,
3 the airlines, the business aircraft owners
4 association and any other elements that could
5 provide me with information. During one of those
6 meetings or following one of those larger
7 meetings, my supervisors and I discussed what
8 further steps we could take. We discussed the
9 option of landing everybody. That was in my mind
10 and I didn't act on that information immediately,
11 in other words, following that discussion, but I
12 had it in my mind, we had discussed it and that I
13 did mention to Linda Scheussler who had come on
14 to the floor shortly after that meeting and I
15 filled her in on what was going on. I indicated
16 that I'm giving some thought to shutting down the
17 entire NAS.

18 Q. NASS is national air space system?

19 A. National air space system.

20 Q. Did she concur?

21 A. Her response was I should do whatever
22 I thought was necessary operationally.

23 Q. After American flight 77 crashed, you
24 thought it was operationally necessary to issue
25 the shutdown order directing all aircraft to land?

1 A. It was my intention following that
2 crash that I land all those aircraft and my order
3 actually was that all aircraft had to land
4 regardless of destination.

5 Q. Did anyone direct you to issue that
6 shutdown order?

7 A. No.

8 Q. You made that on your own authority?

9 A. Yes.

10 Q. I asked you this with respect to the
11 ground stop order, I will ask you with respect to
12 the shutdown order. Was it within your authority
13 to issue that air space shutdown order?

14 A. In hindsight, yes. And certainly in
15 my mind I had no doubt that I had the authority
16 to do that, although it had never been done
17 before, so I don't think it had ever come up in
18 discussion as to the scope of the authority.

19 Q. Combining this shutdown order
20 directing all flights to land with your prior
21 ground stop order directing all flights not to
22 take off, is it fair to say that all air traffic
23 in the United States national air space was shut
24 down?

25 A. In short order, yes. It took a while

1 to accomplish that, much to the credit of the
2 thousands of air traffic controllers and pilots
3 and crews and airports in Canada and all of those
4 people who contributed on that day to put those
5 aircraft down.

6 Q. But the intent was nothing would be
7 coming in, nothing going out in the airports
8 within the United States?

9 A. Absolutely correct. There was also an
10 order -- I would have to look at the exact time
11 line that banned any further aircraft from
12 entering the United States. They were turned
13 back at the borders, that was earlier. I don't
14 see it in your document.

15 Q. In terms of your issuance of the
16 shutdown order, mechanically did you follow the
17 same process as you just described for us with
18 respect to the ground stop order?

19 A. Correct.

20 Q. You collected your supervisors, advised
21 them of the order and they then disseminated the
22 information as you described to us?

23 A. Yes. Some people would say I was loud
24 and they could hear the orders.

25 Q. It says on Exhibit 1 that this was the

1 first unplanned shutdown. Let me ask you this.
2 At the time almost a 35 year veteran or certainly
3 more than a 30 year veteran of the FAA, had any
4 unplanned order shutting down national air space
5 ever been issued prior to September 11?

6 A. Not to my knowledge.

7 Q. Again, we are talking about an
8 unprecedented order in the United States?

9 A. Yes, sir.

10 Q. Was your decision to issue the order
11 shutting down the national air space, the product
12 of or the result of the crashes of American 11
13 and United 175 into the World Trade Center towers
14 earlier on 9/11?

15 MR. JOHNSON: Objection to the form of
16 the question. Vague, ambiguous. Calls for
17 a legal conclusion.

18 A. It was part of the equation that was
19 motivating me to take action on that day.
20 Certainly, given the enormity of those acts, it
21 was a significant part, but it was not the sole
22 reason.

23 Q. Let me ask you this. Would it be fair
24 and accurate to say that those crashes, American
25 flight 11 and United flight 175 into the World

1 Trade Center towers, set in motion the FAA's
2 subsequent regulatory orders and specifically I'm
3 talking about your ground stop order and your
4 order shutting down the national air space?

5 MR. JOHNSON: Objection. Vague,
6 ambiguous. Calls for a legal conclusion.

7 A. I'm not clear on that either. Sorry.
8 I'm not clear what you are asking.

9 Q. I'm asking, did those crashes, the
10 American flight 11 and United flight 175 into the
11 World Trade Center towers on September 11, set in
12 motion the FAA's subsequent regulatory orders,
13 the ground stop order and the order shutting down
14 the national air space?

15 MR. JOHNSON: Objection. Vague,
16 ambiguous. Calls for a legal conclusion.

17 A. Those were my orders and as I
18 indicated earlier, the crash itself was the
19 impetus, but it was the totality of events then
20 occurring. The amount of unknown aircraft. The
21 catalyst, if you will, was certainly the second
22 crash for my ground stop order and the crash into
23 the Pentagon was certainly the catalyst that
24 prompted me to do something right then on the
25 land order. I directed everyone to land.

1 Q. In your mind, could you have justified
2 those orders, the ground stop order and the order
3 shutting down the national air space and the
4 impact on the United States air traffic, without
5 something tangible to point to and rely on for
6 the basis of those orders such as the crashes?

7 A. Those thoughts were never in my mind.

8 MR. JOHNSON: Objection. Vague and
9 ambiguous.

10 Q. Let me ask you in another way. If
11 only the high-jackings of the flights had been
12 reported without any resulting crashes into the
13 World Trade Center towers, would you have issued
14 the ground stop and shut down orders?

15 MR. JOHNSON: Objection. Calls for
16 speculation.

17 MS. MCCARTHY: I think you are getting
18 into opinion.

19 MR. STEUBER: So you won't let him answer.

20 A. Well, look, counsel thinks it's opinion.
21 I don't want to give any opinion.

22 Q. Our deal was no opinion testimony, I
23 will certainly live with that. Exhibit 1
24 indicates further that at 10:39 a.m., quote,
25 reaffirming the earlier order, the FAA issues a

1 notice to airmen, a NOTAM that halts takeoffs and
2 landings at all airports. To the best of your
3 recollection, at or about 10:39 a.m. on September
4 11, was a NOTAM issued by the FAA halting
5 takeoffs and landings at all airports?

6 A. Yes, it didn't halt them, it stated in
7 that system, the NOTAM system, which is available
8 to a lot more people than the air traffic control
9 facilities, but any private pilot, it's stated in
10 that NOTAM that no takeoffs or landings are
11 authorized at any civil airport in America.

12 Q. Did you consider that NOTAM to be a
13 reaffirmation of your prior ground stop and orders?

14 A. I considered it just a follow-up removing
15 any ambiguity of the extent of the earlier order.

16 Q. Did you issue the order directing that
17 such a NOTAM be sent?

18 A. I didn't. That would have been a
19 normal follow-up to the orders I had given
20 earlier carried out by specialists who are
21 charged with those responsibilities that
22 probably -- actually that NOTAM issuance probably
23 came from headquarters. Even though issued out
24 of my facility -- not my facility.

25 Q. The last time entry on Exhibit 1 reads

1 that at approximately 12:15, quote, the air space
2 over the 48 contiguous states is clear of all
3 commercial and private flights, closed quote.

4 To the best of your knowledge, had the
5 air space over the 48 contiguous states been
6 cleared of all commercial and private flights at
7 or about 12:15?

8 A. At or about that time, yes, sir.

9 Q. So I'm clear, this meant that until
10 further order, all of the US airports in the
11 contiguous 48 states couldn't have any flights
12 taking off or landing?

13 A. Barring military or given permission,
14 we began a process almost immediately after
15 shutting down the system of granting exceptions
16 from people to get airborne. There were -- at
17 least the one that comes to mind is the rescue
18 helicopter to get people injured in an accident.
19 The specialist brought that to me and they were
20 requesting permission to travel to get the
21 victims and I gave them permission to do that.

22 Q. But functionally the airports were
23 shut down?

24 A. Absolutely.

25 Q. You mentioned you believed that an order

1 had been issued closing the air space in the Los
2 Angeles area. What was the Los Angeles area?

3 A. The Los Angeles center would encompass
4 LAX Airport and the air space around that,
5 100,000 square miles air space. We ground
6 stopped all air space takeoffs in Los Angeles
7 after New York and Boston because during one of
8 those meetings, the specialist noted the
9 connection between the destination of the
10 aircrafts that crashed or were high-jacked. We
11 definitely ground stopped LAX even though it
12 doesn't appear here.

13 Q. LAX was exclusive, LAX you are talking
14 about?

15 A. Why don't you be more specific and ask
16 me if it included any other airport you were
17 interested in.

18 Q. Did it include other airports?

19 A. Did it include McCaron, no.

20 MR. STEUBER: I have nothing further
21 at this time.

22 MR. JOHNSON: Do you want to take a
23 break or keep going?

24 THE WITNESS: The golf course awaits.

25 EXAMINATION BY

1 MR. JOHNSON:

2 Q. I want to ask a couple of general
3 questions, one that wasn't asked and some people
4 may not know what the FAA is. Can you tell us?

5 A. The Federal Aviation Administration.

6 Q. What does the FAA do?

7 A. Among other things, it provides --
8 regulates the national air space system. It also
9 provides certification in other areas of the FAA,
10 such as for flight crews, safety inspections, the
11 new -- what is the new agency.

12 Q. Transportation safety?

13 A. Yes. They may have taken some of
14 those duties, but the part I'm concerned with is
15 the national air space system.

16 Q. What is the relationship between the
17 FAA and the United States Department of
18 Transportation?

19 A. The Department of Transportation --
20 the Federal Aviation Administration is contained
21 within the Department of Transportation.

22 Q. There are a couple of photographs on
23 the wall to your right. Can you identify those
24 folks?

25 A. That's Mr. Mineta on the left and our

1 new administrator, Ms. Blakey.

2 Q. Who is Mr. Mineta?

3 A. He is the Department of Transportation
4 secretary.

5 Q. He had that same position on September
6 11, 2001, right?

7 A. He did.

8 Q. The woman you said?

9 A. Ms. Blakey is the exact
10 pronunciation. She is new to the Federal Aviation
11 Administration. She succeeded Ms. Garvey who was
12 the administrator of the FAA on that date and she
13 is the current administrator on this date.

14 Q. Jean Garvey?

15 A. Yes.

16 Q. Is safety important to the FAA?

17 A. It's equal mandate with the mandate
18 safety and efficient. You can't have one without
19 the other.

20 Q. Does safety play a decision in virtually
21 all of the decisions that the FAA makes?

22 A. Every decision would be screened for
23 safety. So yes, even though that may not be the
24 motivation, certainly you are not going to do
25 anything that is not safe.

1 Q. You mentioned that you had a mandate,
2 I hope I am stating this correctly. If not,
3 please correct me -- to ensure the safe and
4 efficient operation of the air traffic system?

5 A. Of the national air space system.

6 Q. Then you were asked about what orders
7 you could give. You could give orders within
8 that mandate, is that what you said?

9 A. That is what I said.

10 Q. Like the ground stop order being an
11 example?

12 A. Yes.

13 Q. You had made another comment during
14 your testimony that you had said when it was
15 apparent that there were missiles flying around,
16 you stopped aircraft first in New York, Boston,
17 Los Angeles, the east coast and the national
18 ground stop?

19 A. Yes.

20 Q. What did you mean when you said it was
21 apparent there were missiles flying around?

22 A. That they were purposefully directing
23 planes into buildings or structures or
24 deliberately destroying them. It seemed to me in
25 my mind similar to a missile that we had no

1 control over.

2 Q. You mentioned that in the national
3 command center, there was a grease board or
4 status board that you described?

5 A. Yes, sir.

6 Q. You were noting flight numbers of
7 aircraft on there?

8 A. All aircraft that were deemed
9 suspicious at that point and suspicious was
10 defined as anyone not on their proper route or
11 anyone not on radio communication with us.

12 Q. This is on September 11, 2001?

13 A. Yes, sir.

14 Q. How many planes were on that grease board?

15 A. It varied as communications would
16 develop. When a system with three or four
17 thousand planes in it, there are going to be
18 some -- as a routine matter, are going to lose
19 communication periodically over segments of their
20 flights or deviate from their assigned routes for
21 one reason or another. On this day, given the
22 crashes into the World Trade Center, all those
23 flights were defined as suspect and we tracked
24 them until they were either accounted for or not,
25 not meant that they had crashed.

1 MR. JOHNSON: Mark this as exhibit 2.

2 (Exhibit 2, article from USA Today,
3 marked for identification, as of this date.)

4 (Handing.)

5 MR. JOHNSON: I have marked as Exhibit
6 2, an article from USA Today. I'm not sure
7 the date of the article, but shortly after
8 September 11, 2001.

9 Q. Do you remember seeing this article?

10 A. Yes, sir.

11 Q. You were interviewed for this article,
12 right?

13 A. Yes, sir.

14 Q. I want to ask about some of the
15 statements attributed to you and some of the
16 other things that the article attributes to you.
17 On page 3 of Exhibit 2, there is a mention that
18 you learned of a radio transmission quote, we
19 have some planes, closed quote; is that correct?

20 A. That is correct.

21 Q. When did you learn about this radio
22 transmission quote, we have some planes, closed
23 quote?

24 A. Shortly after the first aircraft was
25 high-jacked.

1 Q. That was according to Exhibit 1, that was?

2 A. Approximately 8:30 is my recollection.
3 Little after 8:30.

4 Q. That was American flight 11?

5 A. That is correct.

6 Q. Where did that radio transmission come
7 from?

8 A. It was reported to me by someone on my
9 staff on that day that the -- I believe the
10 Boston center controllers had overheard cockpit
11 conversation wherein a voice was heard to say we
12 have more planes, not some planes. That's my
13 recollection. That is not accurate in my
14 recollection.

15 Q. Did you take that to mean that there
16 may be more high-jackers out there?

17 A. I didn't know what that meant at that
18 point. It struck me as chilling. The high-jacks
19 were not unusual in my experience and there were
20 a few of them, quite a few of them in the 70's
21 and earlier. The usual treatment of a high-jack
22 was to isolate them, let them go where they
23 wanted to go.

24 They typically land, got money or food
25 or went to Cuba or exchanged it or did something,

1 but they always resolved peacefully. So those
2 words, if accurate, and bear in mind, the
3 information is only received in the blind over an
4 airway, over a transmitter, they couldn't be sure
5 if it was them, but to me it was a chilling
6 statement.

7 Q. You did have a concern there may be
8 other planes out there that would be used as
9 guided missiles effectively, right?

10 A. Not at that juncture. At that
11 juncture, my concern was what was the import of
12 several high-jackings.

13 Q. After the World Trade Center had been
14 struck not once, but twice, you had a concern?

15 A. Absolutely. That was one of those
16 many factors that was in my mind that I alluded
17 to earlier.

18 Q. One of the many factors that fed into
19 your decision to issue the ground stop order, correct?

20 A. Correct.

21 Q. And the order to direct all planes at
22 the nearest airport, correct?

23 A. Correct.

24 Q. On September 11, 2001 after you issued
25 the ground stop order or the order to land all

1 aircraft, did you have any communications with
2 either Jane Garvey or Norman Mineta?

3 A. I didn't.

4 Q. I see statements they attribute the
5 decisions to themselves as making those
6 decisions. Did you see those?

7 A. Success has many authors.

8 Q. You are the one who made the order,
9 right?

10 A. That is correct, and I didn't consult
11 Ms. Garvey nor Mr. Mineta, nor anyone, other than
12 my own staff.

13 MR. JOHNSON: Mark this as Exhibit 3.

14 (Exhibit 3, release from Department of
15 Transportation, marked for identification,
16 as of this date.)

17 (Handing.)

18 THE WITNESS: Do you wish me to read
19 this, sir?

20 MR. JOHNSON: Yes.

21 Q. Let me just ask you if you recognize
22 the text of this?

23 A. I don't. I don't know who Victor
24 White is.

25 Q. It looks to me like some sort of a

1 release from the Department of Transportation.

2 Can you identify as such or not?

3 THE VIDEOGRAPHER: I didn't hear you
4 say who the release was from.

5 MR. JOHNSON: The Department of
6 Transportation.

7 A. I have never seen this nor the text before.

8 Q. In the second paragraph of the statement
9 from Mr. Mineta, he says these terrorist acts are
10 designed to steal the confidence of Americans. We
11 will restore that confidence, we have already taken
12 some first steps as a precaution. I ordered the FAA
13 to ground all air traffic at least as of tomorrow
14 afternoon. Do you see that?

15 A. Yes.

16 Q. Did you view that order to ground all
17 commercial aircraft as a precaution?

18 A. I didn't have that in my mind if
19 that's what you are asking me as a precaution.

20 Q. Right.

21 MR. JOHNSON: Mark this as Exhibit 4.

22 (Exhibit 4, release from the
23 Department of Transportation, marked for
24 identification, as of this date.)

25 (Hanging.)

1 Q. Mr. Sliney, I have handed you Exhibit
2 4. It appears to be another release from the
3 Department of Transportation dated September 12,
4 2001. Have you ever seen this before?

5 A. I have not.

6 Q. In the second paragraph, it reads, the
7 Secretary also announced that the FAA is
8 temporarily extending the ground stop order
9 imposed yesterday while additional security
10 measures are being completed. Do you see that?

11 A. Yes, sir.

12 Q. Are you familiar with that?

13 A. I'm familiar with the length of time
14 that transpired before we allowed any flights to
15 depart. We did extend the -- mechanically, it's
16 not exactly that, but this is a press release for
17 the public. No one was allowed to take off or
18 land until the Secretary of Transportation or the
19 Federal Aviation Administration determined
20 otherwise.

21 Q. Your order was given on September 11,
22 2001, right?

23 A. Correct.

24 Q. It was in place until sometime on
25 September 13, 2001, correct?

1 A. Pretty much, yes.

2 Q. Are you familiar with these additional
3 security measures that are referenced in Exhibit 4?

4 A. I believe those refer to the screening
5 of passengers and the security of the aircraft
6 access. I believe the -- that is to say
7 maintenance crews and all that. They had to
8 complete a certain level -- show a certain level
9 of security before they were allowed to enter the
10 system again.

11 Q. There were some security directives
12 issued after the ground stop order, right?

13 A. That's not my department, but yes, I
14 was aware of the increased security requirements.

15 Q. You have some general familiarity with
16 them; is that right?

17 A. Specific in that we were called upon
18 to look at in detail, the increased requirements
19 and to make a judgement in the days following as
20 to who complied with them and then I also had
21 access to people in headquarters who could help
22 me make that determination if there was any doubt
23 in my mind.

24 Q. Did you have any understanding of the
25 reason for those security directives?

1 A. Yes.

2 Q. What were they?

3 A. My understanding is that we were going
4 to permit aircraft to fly in the national air
5 space system, only those aircraft that we deemed
6 to be secure enough not to become a guided
7 missile or at least assure us as much as possible
8 that they would be safely able to be
9 accommodated.

10 Q. Is it fair to say that the security
11 directives were intended to reduce the likelihood
12 of people getting weapons on aircraft for
13 example?

14 A. Absolutely.

15 Q. Reduce the likelihood of another
16 terrorist attack involving airplanes?

17 A. Absolutely.

18 Q. Is it true that airports would not be
19 certified to resume operations until they
20 complied with the new FAA security measures?

21 A. That's correct.

22 Q. Do you remember the national air space
23 being open effective 11 a.m. eastern time on
24 September 13, 2001?

25 A. I would have to consult my notes as to

1 the exact time. But yes, that does comport
2 somewhat with my recollection.

3 MR. JOHNSON: Mark this as 5.

4 (Exhibit 5, document, marked for
5 identification, as of this date.)

6 (Handing.)

7 Q. Does Exhibit 5 refresh your
8 recollection as to when the national air space
9 system was reopened to commercial aviation?

10 A. It states it was effective 11 a.m.
11 eastern time Thursday, the 13th of September,
12 2001.

13 Q. Is that consistent with your
14 recollection?

15 A. Yes, sir. You did ask me that.
16 Sorry.

17 Q. After the ground stop order, was there
18 anything that prevented a plane from taking off
19 at one of the airports in the United States?

20 A. After the ground stop order?

21 Q. Right.

22 A. Of September 11?

23 Q. Right.

24 A. You mean was there any physical restraint?

25 MR. JOHNSON: Right.

1 MR. STEUBER: I will object. I think
2 it calls for a legal opinion with respect to
3 the definition of prevent.

4 Q. Could a plane have taken off?

5 A. I believe he wouldn't have received an
6 air traffic control clearance. Could a plane
7 take off without being detected from an airport.

8 Q. Or a rogue pilot could have taken off,
9 right?

10 MR. STEUBER: Objection. Calls for
11 speculation.

12 A. I agree it is possible. If you want
13 me to say that. It's certainly speculative on my
14 part.

15 Q. Doing so would have been in violation
16 of the FAA order, right?

17 A. Absolutely. Bear in mind that radar
18 coverage extends over pretty much the entire
19 United States. Had an unidentified aircraft
20 departed, in all likelihood we would have tracked
21 that and notified the military, who at that point
22 were actively occupying the sky.

23 Q. Were you aware of any planes that took
24 off after the ground stop order?

25 A. I'm aware of one in particular.

1 Q. What was that?

2 A. It was a Fed Ex that a controller
3 cleared for takeoff out in Great Falls, Montana,
4 despite the controller's knowledge of the
5 national ground stop order.

6 Q. What happened in that particular
7 situation?

8 A. What happened in what respect, sir?

9 Q. What happened to the plane for example?

10 A. I don't know.

11 Q. What happened with the controller?

12 A. He was subsequently fired and charged
13 with a federal misdemeanor, for which he was
14 convicted.

15 Q. Between the ground stop order on
16 September 11, 2001 and the reopening of the air
17 space on September 13, 2001, there were some
18 flights taking off and landing, right?

19 A. There were flights that were granted
20 exceptions, yes -- exceptions I should say.

21 Q. Some of those were flights taking
22 supplies to New York City and Washington, D.C.,
23 correct?

24 A. There were medical flights. There
25 were medical categories that we allowed after

1 sufficient inquiry to do that. Actually one of
2 the interesting ones was I thought the need for
3 the Federal Reserve to transport checks to
4 various locations. That was one of the
5 exceptions.

6 Q. Was it more than one plane?

7 A. At that point, in the command center
8 we set up a telephone circular if you want to
9 call it that, in one of our large conference
10 rooms with 15 to 20 telephones and persons to
11 handle nothing but request for exceptions such as
12 railroad track inspections and agriculture
13 planes, myriad of flights all in business.

14 Q. Were the crisis counselors of American
15 Airlines allowed to fly to the site of those
16 crashes?

17 A. I don't know that for a fact.

18 MR. JOHNSON: That's all the questions
19 I have. Thank you very much.

20 MR. STEUBER: One or two if I may.

21 BY MR. STEUBER:

22 Q. Mr. Sliney, you mentioned there were
23 certain flight exceptions granted on an emergency
24 basis. Are you aware whether there were any
25 flight exceptions granted with respect to McCaron

1 Airport or for Las Vegas airports for the shutdown
2 period between September 11 and September 13?

3 A. I couldn't say for certain whether
4 they were or were not. Someone from that airport
5 did or had or had not made a request. There were
6 thousands of requests handled by virtually hundred
7 several people. The ones that were granted were on
8 a medical emergency basis or some other emergency
9 basis. In some cases, authority for certain flights
10 came from headquarters, the higher-ups.

11 Q. As you sit here today, you are not
12 aware of any exceptions granted for the McCaron
13 or Las Vegas airports?

14 A. I'm not.

15 MR. STEUBER: Thank you. Nothing further.

16 MR. JOHNSON: Nothing further.

17 MR. STEUBER: Thank you very much.

18 Ms. McCarthy, thank you very much as well.

19 THE VIDEOGRAPHER: This concludes the
20 videotaped deposition of Benedict Sliney,
21 and tape one, which is the only tape. The
22 time is 11:47 a.m. Going off the record.

BENEDICT L. SLINEY

Subscribed and sworn to before me

this ____ day of _____, 2004.

Notary

I N D E X

Witness	Examination By	Page
Benedict L. Sliney	Mr. Steuber	4, 71
	Mr. Johnson	55

MOTIONS:

EXHIBITS

For Id.	Description	Page
1	time line	31
2	article from USA Today	59
3	release from Department of Transportation	62
4	release from the Department of Transportation	63
5	document	67

C E R T I F I C A T E

STATE OF NEW YORK)

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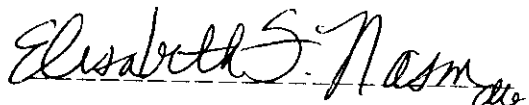
COUNTY OF NEW YORK)

I, ELISABETH F. NASON, a Notary Public
within and for the State of New York, do
hereby certify:

That BENEDICT L. SLINEY, the witness
whose deposition is hereinbefore set forth,
was duly sworn by me and that such
deposition is a true record of the testimony
given by the witness.

I further certify that I am not
related to any of the parties to this action
by blood or marriage, and that I am in no
way interested in the outcome of this
matter.

IN WITNESS WHEREOF, I have hereunto
set my hand this 3rd day of May, 2004.



ELISABETH F. NASON

Errata Sheet

Pg/Ln

Correction

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Signature: _____ Date: _____

September 11, 2001 - The FAA Responds

Page 1 of



September 11, 2001

FAA Respo

From the takeoff of Flight 11 at 8:00 a.m. to U.S. airspace clear of civil aviation flights at 12:15 p.m., here are the times of key Sept. 11, 2001, events.

0800. American Airlines Flight 11, a Boeing 767 with 92 people on board, takes off from Boston Logan airport for Los Angeles.

Sept. 11, 2001 Hc

0814. United Air Lines Flight 175, a Boeing 767 with 65 people on board, takes off from Boston Logan airport for Los Angeles.

FAA Portraits

Hundreds of FAA pe
worked to improve
security and restore
aviation after the ski
were closed on Sept
2001. Here are som
their portraits.

Week of September
Week of September

0821. American Airlines Flight 77, a Boeing 757 with 64 people on board, takes off from Washington Dulles airport for Los Angeles.

0840. FAA notifies the North American Aerospace Defense Command's (NORAD) Northeast Air Defense Sector about the suspected hijacking of American Flight 11.

0841. United Air Lines Flight 93, a Boeing 757 with 44 people on board, takes off from Newark airport for San Francisco.

0843. FAA notifies NORAD's Northeast Air Defense Sector about the suspected hijacking of United Flight 175.

In Their Own Wo

Memories and thoug
from our employees.

0846. (approx.). American Flight 11 crashes into the north tower of the World Trade Center.

Week of September
Week of September
September 11
Week of September
September 18

0902. (approx.). United Flight 175 crashes into the south tower of the World Trade Center.

0904. (approx.). The FAA's Boston Air Route Traffic Control Center stops all departures from airports in its jurisdiction (New England and eastern New York State).

Clearing the Skir

Landing so many pl
so quickly was an
outstanding achiev
A series of articles in
Today explains the
behind-the-scenes
decisions and action

0906. The FAA bans takeoffs of all flights bound to or through the airspace of New York Center from airports in that Center and the three adjacent Centers - Boston, Cleveland, and Washington. This is referred to as a First Tier groundstop and covers the Northeast from North Carolina north and as far west as eastern Michigan.

0908. The FAA bans all takeoffs nationwide for flights going to or through New York Center airspace.

0924. The FAA notifies NORAD's Northeast Air Defense Sector about the suspected hijacking of American Flight 77. The FAA and NORAD establish an open line to discuss American 77 and United 93.

0926. The FAA bans takeoffs of all civilian aircraft regardless of destination - a national groundstop.

0940. (approx.). American Flight 77 crashes into the Pentagon.

0945. In the first unplanned shutdown of U. S. airspace, the FAA orders all aircraft to land at the nearest airport as soon as practical. At this time, there were more than 4,500 aircraft in the air on Instrument Flight Rules (IFR) flight plans.



September 11, 2001 - The FAA Responds

Page 2 of 2

1007. (approx.) United Flight 93 crashes in Stony Creek Township, PA.

1039. Reaffirming the earlier order, the FAA issues a Notice to Airmen (NOTAM) that halts takeoffs and landings at all airports.

1215. (approx). The airspace over the 48 contiguous states is clear of all commercial and private flights.

Notes:

All times are Eastern Daylight. For UTC/Zulu/GMT, add four hours.

Flight departures are actual takeoff times, not scheduled or gate departure times.

EXHIBIT 2



Part I: Terror attacks brought drastic decision: Clear the skies

By Alan Levin, Marilyn Adams and Blake Morrison, USA TODAY

Capt. Jim Hosking is stunned as he reads the message from the cockpit printer aboard United Flight 890. On most days, messages sent to the Boeing 747 are ordinary: maintenance items or reports of bad weather. On this day, Sept. 11, before sunrise over the Pacific Ocean, the warning is unlike any he has seen. *Hijackings? Terrorist attack?* Taking off from Narita, Japan, just hours before, Hosking, 56, looked forward to heading home to Los Angeles, where his wife would be waiting. But reading the message, sent at 9:37 a.m. Eastern Time, the pilot of 34 years wonders: What the hell happened down there? And then, even more chilling: *What's going to happen up here?*



In this two-part series, USA TODAY reconstructs how the unprecedented order to clear the skies on Sept. 11 played out.

"SHUT DOWN ALL ACCESS TO FLIGHT DECK." In the cabin behind him sit 243 passengers — all of them strangers to Hosking. He turns toward first officer Doug Price. "Get out the crash ax," Hosking tells him.

At the Federal Aviation Administration's command center in Herndon, Va., air traffic managers also struggle to make sense of what's happening.

Already, terrorists have deliberately flown two jets into the World Trade Center. The hijackings are unlike anything anyone has seen. In the past, hijackers commandeered passenger jets for political reasons. Pilots were told to cooperate with them, to take the hijackers wherever they wanted to go.

Today, the hijackers don't want to go anywhere. They just want the jets.

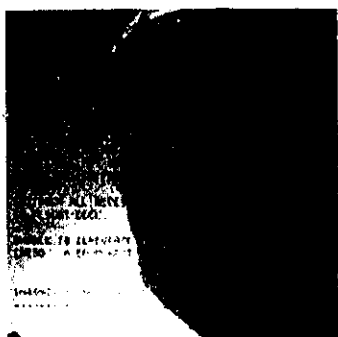
At the FAA's command center, managers can think of only one way to stop them. Minutes after another jet smashes into the Pentagon at 9:38 a.m., the managers issue an unprecedented order to the nation's air traffic controllers:

Empty the skies.

Land every flight.

Fast.





By Robert Hanashiro, USA TODAY
On Sept. 11, 2001, United Airlines Captain Jim Hosking received a message during a flight from Japan to LAX. The message read, "There has been a terrorist attack against United Airlines and American Airlines aircraft. We are advised there may be additional hijackings in progress. Shut down all access to the flight deck. Unable to elaborate further."

No one can be certain how difficult this task will prove.

But for an air traffic control system sometimes paralyzed by a patch of bad weather, the order seems overwhelming. Almost 4,500 planes will have to land within hours, many at airports hundreds of miles from where they were headed.

The situation could be worse. On this day, the weather is pristine over most of the nation. And the early hour means most West Coast flights haven't even taken off.

Still, the skies have never been emptied before, and controllers, pilots and aviation officials have never faced such pressure. Rerouting so many flights seems a logistical nightmare with no margin for error.

And no one knows how many terrorists might still be in the air. During these hours, those who run the nation's aviation system will come to believe as many as 11 flights have been hijacked.

This is the story of the four most critical hours in aviation history — an ordeal that began at 8:15 a.m., when the first indication that something was wrong came during a telephone call to American Airlines.

8:15 a.m.: 3,624 planes in the sky

Intruders in the cockpit

The call doesn't make any sense. Not at first.

Key times

8:46 — American Airlines Flight 11 hits the north tower of the World Trade Center.

9:03 — United Airlines Flight 175 hits the south tower.

9:03-9:07 — New York and Boston regions' air traffic control officials stop takeoffs and landings. The New York Port Authority closes Newark International Airport.

9:08-9:11 — Departures are stopped nationwide for aircraft heading to or through New York and Boston regions' airspace.

9:25 — Federal Aviation Administration stops takeoffs nationwide.

9:35 — United Airlines Flight 93 begins unauthorized climb, raising concerns it has been hijacked.

9:38 — American Airlines Flight 77 crashes into the Pentagon.

9:45 — FAA orders all aircraft to land as soon as possible.

9:59 — Trade Center's south tower collapses.

10:06 — United Airlines Flight 93 crashes in Shanksville, Pa.

10:29 — North tower collapses.

At American Airlines' operations center in Fort Worth, manager Craig Marquis talks to a reservations agent in North Carolina. The agent isn't sure what to do.

On another line, the agent is speaking with a flight attendant who's in the air but can't reach the pilots on her jet. The agent wants to transfer the call to Marquis but the phone system won't let her. So she begins to relay messages coming from the back of American Flight 11, a Boeing 767 heading from Boston to Los Angeles.

Aboard, flight attendant Betty Ong tells what's unfolding.

Marquis, a blunt-spoken veteran, isn't sure what to make of the call. *Is the woman even a flight attendant?* he wonders. He checks his computer as he listens on the phone. *There she is. Betty Ong. And she is on that flight.*

Ong can't contact the pilots, the agent says. That's why she's calling. Why doesn't she just walk up to the cockpit and bang on the door? But as he listens — as Ong, in hushed tones, tells of a passenger dead and a crewmember dying, of the jet's erratic path and intruders in the cockpit — Marquis realizes that Ong can do little.

The flight has been hijacked.

As Marquis, 45, considers what he can do, air traffic controllers at the FAA's Boston Center reach the same conclusion. Flight 11 has stopped talking. Its pilots don't respond to calls; its transponder signal has disappeared. Worse, controllers report hearing a man with a strange accent in the cockpit.

"We have some planes," he says through an open mike. "Just stay quiet and you will be OK."

Could more hijackers be out there?

In the FAA's command center in Herndon, Ben Sliney learns of the radio transmission. The words will haunt him all morning. "We have some planes."

Some? How many?

Sept. 11 is Sliney's first day on the job as national operations manager, the chess master of the air traffic system. The New Yorker, a lawyer who once sued the FAA on behalf of air traffic controllers, now walks the floor of the center — a room that resembles NASA's Mission Control.



By Tim Dillon, USA TODAY

Ben Sliney, the national operations manager at the FAA's command center in Herndon, Va., was on duty at the center on Sept. 11.

Loud and forceful, Sliney fits the mold of others there. After managers at the center were criticized for not taking enough action to prevent record flight delays in 1999, the specialists were urged to speak freely during crises. That way, those in charge would have the information they needed to make sound decisions. On this day, that policy will be put to the test, and the center is deafening, like the New York Stock Exchange when everyone's trying to sell.

"We have some planes..."

Sliney can't shake the words. *Are there more hijackers out there?*

8:30 a.m.: 3,786 planes

"Wow, look at that!"

In the FAA's largest air traffic facility in New York state — a warehouse-like structure on Long Island, an hour east of Manhattan — manager Mike McCormick rushes to the banks of radar screens where controllers are trying to track Flight 11.

The former Marine presses his cordless phone to one ear as he talks to officials at other facilities in the New York area. But the other ear is doing most of the listening — to the radio reports of pilots who are watching the jet's progress.

Over New York, Flight 11 has begun to descend. Not into JFK or LaGuardia or Newark International Airport but into the city itself.

It must have electrical problems, he thinks. That's probably why the transponder is off. McCormick calls another air traffic center that hands off flights to New York's three major airports. Flight 11, he warns, might try an emergency landing.

In Fort Worth, Gerard Arpey, American Airline's executive vice president for operations, hears about the Ong call and the strange transmissions from Flight 11. In his 20 years with American, Arpey, 43, has grown used to stories about misbehaving passengers — the drunks and disorderlies that airlines encounter. *But this, he thinks, this seems more than that. This sounds real.*

He tries to reach his boss, CEO Don Carty, but Carty isn't in yet. Then he heads to the airline's command center, where top operations officials gather only in the event of an emergency. *They're all here,* Arpey thinks as he walks through the door.

All but Craig Marquis.

Just down the hall, in the airline's operations center, Marquis hasn't left the phone. Still listening to the relayed words of Ong, he works to calculate how much fuel the jet carries. That way, he may be able to predict where the hijackers will take the flight. But at 8:46 a.m., the North Carolina agent abruptly loses Ong's call. Marquis' calculations no longer matter.

At Newark's tower, just across the Hudson River from Manhattan, controller Rick Tepper, 41, stands at a console behind a group of other controllers.

There, he answers phones and troubleshoots problems. He and the other controllers often wear jeans and polo shirts. The attire belies their intense work ethic.

When Tepper looks past the controllers, he sees it out the window: a mushroom cloud rising from the World Trade Center's north tower.

"Wow! Look at that," he says to no one in particular. Flames shoot from the building. "How are they going to put that out?"

He didn't see what caused the explosion, but on the chance that it was a plane, he begins calling airports nearby.

"Did you lose anybody?" he asks over and over. No one has.

Then, a phone rings: the "shout line," set up for speedy calls among controllers in the region. Tepper answers. "We've lost an aircraft over Manhattan," someone at the New York center says. "Can you see anything out your window?"

"No, I don't see anything ... " Tepper pauses. "But one of the towers, one of the trade towers, is on fire.

"I'll call you back."

9 a.m.: 4,205 planes

"This is not a drill!"

At the New York center, McCormick struggles to keep up with the barrage of information, most of it annoyingly vague.

That must have been American 11, McCormick thinks. Could it be terrorism?

Just three days before, celebrating his 45th birthday, he had taken his 8-year-old son Nicholas to the Trade Center. There they stood, toes touching one tower, peering toward the sky.

Now he tries to figure out why an airliner would've hit the building. Just before American disappeared, controllers heard an emergency beacon. *From what?* McCormick wonders. And controllers can't find a helicopter that has disappeared from radar over the city. *Did it hit the Trade Center, too?*

In Herndon, national operations manager Sliney receives word from officials in New York: A small plane has crashed into the Trade Center. One of the room's 10-by-14-foot TV monitors comes to life with CNN. Black smoke gushes from the north tower. The hole is huge. And the smoke!

That was no small plane, Sliney thinks.

At United Airlines headquarters outside Chicago, Andy Studdert rushes to the airline's crisis center, a windowless room with a large screen on one wall. To those who work there, the room resembles the bridge on *Star Trek's* starship Enterprise.

"Confirm American into the Trade Center!"

Workers don't need to look up to recognize the booming baritone of Studdert, 45, the airline's chief operating officer.

Ten days earlier, he had popped a surprise drill on the staff. He told them a flight over the Pacific had suffered a potentially disastrous engine failure and radio contact had been lost. For 30 minutes, workers believed the story. Then Studdert told them the truth.

On this day, he makes certain everyone knows the stakes. "This is not a drill!" he shouts, but the staff already

knows.

What they are about to tell Studdert is even worse than what brought their boss to the crisis center. Controllers have lost radio contact with a second flight — a United jet that, like American Flight 11, took off from Boston bound for Los Angeles.

On the giant screen at the front of the room, airline workers can only watch as United Flight 175, northwest of New York, heads toward Manhattan.

Then ... it vanishes.

"There was another one!"

In the Newark tower, the shout line rings again.

Where's United Flight 175? "Can you see him out the window?" the caller asks Tepper, the Newark controller.

Beyond the New Jersey shipyards, Tepper spots the jet flying north, up the Hudson River. His eyes track it toward the Manhattan skyline. It's moving fast. Too fast. And rocking. Its nose points down in a dive and now it's banking left and then right and moving as Tepper has never seen a jet move and then it starts to level and

"Oh my God! He just hit the building," Tepper tells the caller.

In Herndon, a shout: "There was another one!" and the giant TV monitor glows orange from the fireball. Scores of workers gasp, as if sucking the air from the room.

It can't be a second one. At the New York control center, McCormick's deputy, Bruce Barrett, sits incredulous at the watch desk, the facility's nerve center.

For a moment, Barrett can think only of his daughter, Carissa, who works in lower Manhattan. *Could she be visiting someone at the Trade Center?* Then he sweeps the thought from his mind. *Stay calm*, he tells himself.



By H. Darr Beiser, USA TODAY
As Bruce Barrett gave the order for "ATC Zero" in the Northwest, he worried about his daughter working in Manhattan.

Someone has to. Controllers who had been watching TV in the break room are rushing onto the floor. They saw the jet hit the other tower. Is there really any question what he should do?

"We're declaring ATC zero," he tells air traffic managers. McCormick approves the order. Clear the skies over the region.

If they have overreacted, the decision could ruin both their careers. But after what they just witnessed, they give little thought to asking for permission. A call to Washington could take minutes, and they aren't sure they have that long. They aren't certain of anything, except that they need to do something.

A handful of managers spread the word to controllers. *It doesn't seem like enough*, Barrett thinks, but it's the most he can do.

The time: 9:03 a.m.

A radical decision

On its face, the order seems incredible. Not a single flight in or out of New York? Some of the nation's biggest airports shut down?

Controllers had gone to "air traffic control zero" before, but only when their radar shut down or their radio transmitters went silent. The planes kept flying then, and controllers in other centers guided them.

This time, ATC zero means something far more drastic. It means emptying the skies — something that has never been attempted. And not just the skies over Manhattan. Controllers must clear the air from southern New England to Maryland, from Long Island to central Pennsylvania — every mile of the region they control.

The move reverberates through almost every part of the nation. Controllers from Cleveland to Corpus Christi must reroute jets headed to the region and put some in holding patterns.

In the windowless room of the New York control center, Barrett, at 56 one of the facility's most senior managers, scans the faces of the other managers. Most pride themselves on their macho, can-do attitudes. Cool under pressure. Calm during the worst. *But this ... who has prepared for this?* In the dim light, Barrett sees that they're looking at him strangely, as though they can't believe what he's saying.

One controller begins to sob and shake. "I don't understand how come I'm reacting like this," the controller says. It reminds Barrett of the traumatized troops he saw as a photojournalist in Vietnam.

You're scared, Barrett thinks, but he can't afford to be. He needs to concentrate. To focus. But his phone! It won't stop ringing. Everyone wants to know what's going on, including his wife, Denise. She asks about their daughter.

"I don't have time to talk to you," Barrett tells her. "Just call and find out if she's OK."

The white board

At the FAA's command center in Herndon, attention shifts from the weather maps and the radar displays.

The new focus: a white dry-erase board propped at the front of the room.

On it, staffers have begun to scribble the call letters of every flight that controllers around the nation fear might be in the hands of hijackers.

Weather experts and the specialists who normally work on reducing flight delays have been drafted to investigate. They badger airlines to find out whether anyone knows what's happening aboard a number of flights. On this day, the routine glitches of the air traffic system — a missed radio call, even a pilot who seems uncooperative — raise suspicions. Unless a controller or airline official can assure them the glitch is simply routine — that the captain is responding and everyone is safe — the flight's letters won't be crossed out.

The phone bridges between air traffic facilities have become emergency hotlines of sorts, and the reports of possible hijackings — many of them sketchy — flow at a frenetic pace.

As Sliney, the operation's manager, moves around the room, a handful of air traffic specialists follow. Together, they have decades of experience, and no one hesitates to share an opinion. But without good information, Sliney knows that any decision might be risky. Amid the shouts and chatter and conflicting reports, he reminds himself: *Don't jump to conclusions. Sort it out.*

Now, during a massive conference call among air traffic facilities, officials in Herndon learn about a third jet that might be in the hands of hijackers: American Airlines Flight 77, bound for Los Angeles.

The jet departed from Washington's Dulles International Airport. It stopped talking to controllers somewhere near the Ohio-Kentucky border. Moments later, it disappeared from radar. Its call letters join the list on the white board — a list that will eventually swell to 11.

But why? What is this about? Across the nation, controllers and airline and aviation officials struggle to understand.

These weren't typical hijackings. Terrorists weren't seeking political asylum or a trip to Havana. They were using the two jets as guided missiles. They *meant* to hit the World Trade Center. No question about that.

Most of the pilots in the air don't know what has happened. Or why. How could they? Officials on the ground are still trying to make sense of it.

Pilots have always been trained to cooperate with terrorists, to do whatever they want in order to save lives. That means a crew probably won't fight back, at least not at first. And who knows how many other flights have terrorists aboard?

Again, Sliney hears them: the words that came from Flight 11.

"We have some planes."

9:15 a.m.: 4,360 planes

Unprecedented decisions

From the moment air traffic managers McCormick and Barrett start to clear the airspace over New York, government and airline officials across the nation — almost in unison — begin to take similar, unprecedented steps.

In Fort Worth, American operations managers huddle, talking breathlessly about their options. They already have lost one flight. And now, Flight 77 has disappeared. Do they have a choice?

Manager Marquis' voice booms over the loudspeaker. "Anything that hasn't taken off in the Northeast," he says, "don't take off."

At the FAA's command center in Herndon, officials worry about what might be unfolding. *Maybe there's another wave of hijacked jets coming off the West Coast. And what about the international flights?*

The center halts takeoffs of all flights bound for New York and New England. Then officials stop takeoffs for any flight headed to Washington, D.C. Moments later, they freeze takeoffs headed to Los Angeles, the destination of the two hijacked flights that crashed into the Trade Center. Then to San Francisco.

The orders will keep hundreds of flights on the ground. As in surgery, each step clamps shut another artery of the air traffic system.

But the moves aren't strong enough for some of the air traffic specialists at the center, who bombard Sliney with advice.

"Just stop everything! Just stop it!"

The words ring true to Sliney. It doesn't matter who said them — with the noise in the room, it's hard even to know. *But stopping everything*, he thinks. *That makes sense.*

At 9:25 a.m., with Flight 77 still unaccounted for, Sliney issues another order that no one has ever given: full groundstop. No commercial or private flight in the country is allowed to take off.

The decision is sweeping, but Sliney has no doubt he has made the right call. And if he's wrong? At least he has erred on the side of safety. If higher-ups want to second-guess him, so be it. He has left the agency before to practice law, and he knows if he has to depart again — if someone thinks he's screwed up — he can leave with no regrets.

What he doesn't know — what no one knows — is how crucial this order to ground planes will prove when controllers are asked later to clear the skies.

9:25 a.m.: 4,452 planes

Watch and wait

In the New York control center, Bruce Barrett wonders what lies ahead. Scores of overseas flights are heading to New York. Though many are hours from landing, rerouting them from the now-closed airspace will be far more difficult than clearing the skies over the area had been.

Over land, controllers can see jets on radar and reach them by radio. But those tools are useless beyond a 200-mile band near the shoreline. The New York center's oceanic controllers must use a complicated system to guide jets. They estimate a jet's position and issue commands to a private company, which relays them to the jet. If the jet doesn't follow a command, controllers might never know.

Barrett already has told the oceanic supervisor to turn every jet away from U.S. airspace. The primary option: Canada.

"Are you sure this is where we want to go?" the supervisor asked.

Yes, he was certain. But now, he learns that Canadian authorities are not. An official there tells the supervisor that Canada cannot accept all the arrivals streaming across the North Atlantic.

"Just be emphatic," Barrett tells the supervisor, "and tell them they're not coming here."

In Herndon, Sliney considers his options. *Do something. Make a decision. That's the credo of the air traffic controller. Make a decision.*

But what? What should he do? Already, they have stopped takeoffs nationwide. What else can they do? Land every plane?

Throughout the morning, few had agreed what the right move was. Officials in Herndon initially questioned whether managers in New York had overstepped their authority when they cleared the airspace there. But all of the moves had proved right. And now, a consensus is building: They should land every plane.

Then, just before 9:30 a.m., a report comes from a controller at Washington Dulles International Airport. She has a jet on radar, heading toward Washington and without a transponder signal to identify it. It's flying fast, she says: almost 500 mph. And it's heading straight for the heart of the city. Could it be American Flight 77?

The FAA warns the Secret Service. Fighter jets from Langley Air Force Base in Virginia race toward Washington. They won't get there in time.

'Get to the nearest airport'

On his way to the office in Fort Worth, Don Carty, American's CEO, talks on his cell phone. Flight 77 has vanished, he is told.

He was at home when Flight 11 hit the Trade Center. The TV in the kitchen was on. "Could that be your airplane?" his wife asked. Her face went pale.

Carty, 55, told her no. No, of course not; it couldn't have been. But even he didn't believe what he was saying. By the time Carty reaches the office, a jet is bearing down on Washington. *Is it Flight 77?* A groundstop will keep flights from taking off. *But what about the ones in the air?* he wonders.

At the airline's operations center in Fort Worth, vice president Arpey takes charge. "I think we better get everything on the deck," Arpey says. *What the hell am I doing?* he thinks, but Carty concurs when he arrives minutes later.

"Do it," he says, and Arpey puts the order out to land every American plane.

At United headquarters in Elk Grove, Ill., operations head Studdert issues a similar order: "Tell them to get to the nearest airport they can."

Before this day, no airline has ordered all of its planes from the sky.

'Where's it going?'

At FAA headquarters, less than a half-mile from the White House and Capitol, Dave Canoles paces before a

speakerphone.

The head of air traffic investigations, Canoles has set up phone connections with air traffic facilities. As different regions come on the line, the reports of suspicious planes accumulate. *We might be at war by afternoon*, Canoles thinks. *The FAA had better be ready*. Already, some air traffic centers had considered evacuating. Canoles told them to stay put.

Now, about 9:35 a.m., he and others on the conference call listen as an official watching a radarscope tracks the progress of the jet heading for Washington.

Canoles sends an investigator who works for him to an adjoining office with a view to the west. "See if you can spot it," he tells him.

"Six miles from the White House," a voice on the phone says.

Canoles glances outside, through a window facing north. He wonders if he and his co-workers are in danger. At 500 mph, the jet is traveling a mile every seven seconds.

"Five miles from the White House."

No way the FAA is a target, Canoles thinks. *It can't be*.

"Four miles from the White House."

They'd never choose to hit us. No way.

"The aircraft is circling. It's turning away from the White House."

Where? Where's it going?

Then: "It's gone."

In the adjoining office, the investigator spots smoke to the west of the city.

The jet has hit the Pentagon. The time: 9:38 a.m.

'Order everyone to land'

For the last 30 minutes, since the second Trade Center tower was hit, Sliney has considered bringing every flight down. Now, the manager in charge of the nation's air traffic system is certain.

He has no time to consult with FAA officials in Washington.

The skies are filled with guided missiles, he thinks. *Filled with them*. The words he cannot shake have proved true. The hijackers did have more planes.

"Order everyone to land! Regardless of destination!" Sliney shouts.

Twenty feet away, his boss, Linda Schuessler, simply nods. She had organized the command center earlier that day, trying to create order from the chaos so Sliney could focus on what had to be done.

"OK, let's get them on the ground!" Sliney booms.

Within seconds, specialists pass the order on to facilities across the country. For the first time in history, the government has ordered every commercial and private plane from the sky.

9:45 a.m.: 3,949 planes

A misunderstanding

In Washington, FAA Administrator Jane Garvey and her deputy, Monte Belger, have been moving back and forth between a secret operations center and their offices.

Throughout the morning, staffers have kept Garvey and Belger apprised of Siiney's decisions.



By Paul Whyte, USA TODAY
FAA Administrator Jane Garvey approved the order to clear the skies.

Now, they tell them of the order to clear the skies. With little discussion, the FAA leaders approve.

Minutes later, Transportation Secretary Norman Mineta calls from a bunker beneath the White House, where he has joined Vice President Cheney. Belger explains that the FAA plans to land each plane at the closest airport, regardless of its destination.

Mineta concurs. FAA staffers, following the conversation over the speakerphone with Belger, pump their fists. Then the conversation sours.

Mineta asks exactly what the order means.

Belger says pilots will retain some discretion. All the FAA deputy means is that under long-standing aviation regulations, pilots always have some discretion in the event of an emergency aboard their aircraft. But the secretary assumes the FAA is not being tough enough. "F--- pilot discretion," Mineta says. "Monte, bring down all the planes."

Ready for a fight

Aboard United Flight 890 over the Pacific, Capt. Hosking and another pilot, Doug Price, wait anxiously for news.

A third pilot, "Flash" Blackman, sleeps in the bunkroom in the cockpit of the 747, unaware of what's unfolding.

"Why don't we just let him sleep?" Hosking suggests. Price, set for the next break, agrees.

"I couldn't go to sleep if I wanted to," Hosking says.

The message about the hijackings arrived only minutes ago, but the two already have decided: Hijackers are aboard their flight.

They don't know that for sure. But they decide to believe it, if only to keep the jet safe. For years, they had been instructed to cooperate with hijackers. No longer. This time, they won't give up without a fight, not when they know someone might try to hijack the jet.

Quickly, they wedge their bags between a jump seat and the flimsy cockpit door. The door opens inward and, with the suitcases there, no one can budge it. Not without a lot of effort.

And if someone does manage to get through the cockpit door?

Price will be waiting as Hosking flies the jet. He has the cockpit's hatchet-sized crash ax in hand, along with orders to use it.

"If someone tries to come in that door, I don't want you to hurt him," Hosking says. "Kill him."

Tuesday: Searching for more hijackers

Find this article at:

http://www.usatoday.com/news/sept11/2002-08-12-clearskies_x.htm

☐ Check the box to include the list of links referenced in the article.

EXHIBIT 3

Victor White

From: DOT NEWS Services [DOTNEWS@listserv.dot.gov] on behalf of Kunkle, Jennifer (JJ)
[Jennifer.Kunkle@OST.DOT.GOV]
Sent: Tuesday, September 11, 2001 8:21 PM
To: DOTNEWS@mdspub01.dot.gov
Subject: Statement of Secretary of Transportation Norman Y. Mineta

Tuesday, September 11, 2001
7:30 p.m. (EST)
Contact: Chet Lunner
Tel.: (202) 366-4570
DOT 93-01

Statement of Secretary of Transportation Norman Y. Mineta

One of the most cherished American freedoms is the freedom of movement, the ability to move freely and safely. Today that freedom has been attacked. We will restore that freedom throughout the national transportation system as soon as possible. And we will restore the highest possible degree of safety.

These terrorist acts are designed to steal the confidence of Americans. We will restore that confidence. We have already taken some first steps. As a precaution, I have ordered the FAA to ground all commercial air traffic until at least tomorrow afternoon.

After the attacks, some of our aircraft were diverted to Canada. We owe our Canadian neighbors a debt of gratitude for helping us redirect over 120 flights and their passengers to airports in Canada.

As of 6:00 p.m., AMTRAK resumed its passenger rail service. Major railroads have taken steps to protect their assets, as well.

The United States Coast Guard is taking all necessary actions to control the movement of any vessel in any navigable water in the United States. Coast Guard helicopters have been assisting with medical and national security tasks.

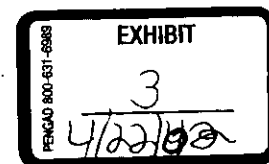
We are currently looking at a wide variety of additional security measures to increase traveler security.

Travelers will see increased security measures at our airports, train stations and other key sites. There will be higher levels of surveillance, more stringent searches. Airport curbside luggage check-in will no longer be allowed. There will be more security officers, random identification checks. Travelers may experience some inconveniences. We ask for your patience. But we must do whatever it takes, with safety as our highest priority.

9/12/2001

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8:37 AM



FM-C 00075

The Department of Transportation is working closely with the White House and appropriate federal agencies to mount a coordinated, nationwide recovery effort.

Each American must know that we will restore our national transportation system to a safe and efficient status as quickly as possible. Our system has been severely burdened by the stress of these horrendous attacks, but we will recover.

In a democracy, there is always a balance between freedom and security. Our transportation systems, reflecting the values of our society, have always operated in an open and accessible manner. And, they will again.

Please be assured that we are activating all of our resources on an emergency basis, and services will be restored as soon as possible.

EXHIBIT 4

Victor White

From: DOT NEWS Services [DOTNEWS@listserv.dot.gov] on behalf of DOT News
[DOT.News@OST.DOT.GOV]
Sent: Wednesday, September 12, 2001 2:04 PM
To: DOTNEWS@mdspub01.dot.gov
Subject: AIRPORTS TO REMAIN CLOSED, MINETA SAYS

Wednesday, September 12, 2001
DOT 95-01
Contact: Chet Lunner

Tel.: (202) 366-4570

AIRPORTS TO REMAIN CLOSED, MINETA SAYS

Secretary of Transportation Norman Y. Mineta has announced the Federal Aviation Administration will allow a limited reopening of the nation's commercial airspace system in order to allow flights that were diverted yesterday to continue to their original destinations.

The Secretary also announced that the FAA is temporarily extending the ground stop order imposed yesterday while additional security measures are being completed.

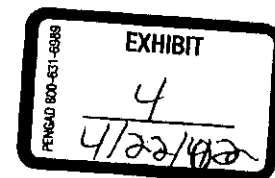
"Safety is always of paramount importance, and in these extraordinary times we intend to be vigilant," Mineta said. "We remain committed to resuming commercial flights as soon as possible.

"As the President said last night, these despicable terrorist attacks have shaken the foundation of our greatest buildings, but have not shaken the foundation of this great nation," the Secretary said.

"As America watches the efforts of our heroic emergency responders and rescue personnel, we keep the victims and their families in our prayers," he also said.

Mineta said the FAA would permit flights today only in special limited circumstances. Flights diverted as a result of yesterday's order will be allowed to continue to their original destination under vastly tightened security guidelines. Only passengers on the original flights will be allowed to re-board, and only after airports and airlines have implemented strict screening measures. Airlines will also be allowed to reposition empty aircraft, he said.

Mineta said a variety of stepped-up security measures will be instituted at the airports once they re-open. These measures include:



9/12/2001

1

2:31 PM

FM-C 00079

Statement of U.S. Secretary of Transportation Norman Y. Mineta

Page 1 of 1



News
U.S. Department of Transportation

Thursday, September 13, 2001
Contact: Chet Lunner
Tel.: 202/366-4570
DOT: 96-01

Statement of U.S. Secretary of Transportation Norman Y. Mineta

Secretary of Transportation Norman Y. Mineta has ordered the national airspace system re-opened to commercial aviation, effective at 11 a.m. Eastern time Thursday.

The Secretary's decision was made after a series of meetings throughout the day and night Wednesday with White House and Cabinet officials, Federal Aviation Administration Administrator Jane Garvey, aviation industry leaders, as well as intelligence and law enforcement representatives.

"The re-opening of our national airspace is good news for travelers, for the airlines and for our economy," Secretary Mineta said. "But I must caution everyone that a system as diverse and complex as ours cannot be brought back up instantly. We will re-open airports and resume flights on a case-by-case basis, only after they implement our more stringent levels of security. This phased approach will assure the highest levels of safety, which remains our primary goal.

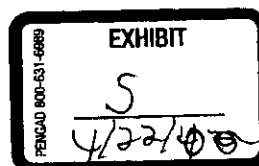
"Anyone planning on flying should check with their airline regarding the level of service and flight schedules, and be sure to allow plenty of time to deal with our new security procedures. There will be some inconveniences, but safety will be the first element of our system to be restored," the Secretary said.

On Wednesday, Secretary Mineta had approved a limited re-opening of the system, allowing aircraft diverted during Tuesday's terrorist attacks to continue to their destinations or be repositioned in anticipation of today's decision.

At the same time, he announced a series of heightened security measures, including a ban on curbside luggage check-in and off-airport passenger check-in. Before being allowed to re-open, airports must clear their terminals of people and conduct thorough searches. Once re-opened, airports will feature an increased presence of law enforcement officers, restricted access beyond the screening area and other restrictions.

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Briefing Room



FM-C 00214

<http://www.dot.gov/affairs/dot9601.htm>

10/31/01

**STATEMENT BY
THE HONORABLE NORMAN Y. MINETA
SECRETARY OF TRANSPORTATION
Before the
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION
UNITED STATES SENATE
September 20, 2001**

Mr. Chairman, Members of the Committee, it is with both sadness and resolve that I appear before you today. Obviously, our lives, and the life of our nation, changed dramatically as a result of the terrible attack of September 11.

Though we will never overcome the sorrow we feel for the families and friends who lost loved ones, we will be able to ensure public safety.

And, while it may take time to recreate comfortable confidence in air travel, I assure this committee that we can—and will—enjoy a transportation system that is safe, secure, and stable. The effort being expended by the government, the carriers, airport authorities, local police forces, and others on behalf of aviation will continue, and the traveling public can count on this.

That is the President's commitment, and I will marshal all resources of the Department of Transportation to accomplish that fundamental goal.

I should begin by taking this public opportunity to express my profound gratitude and pride in the performance of the employees throughout the Department of Transportation. I want to emphasize particularly my appreciation for the professionalism displayed by the FAA from top-to-bottom since the attack. From Administrator Garvey on down, the FAA has performed magnificently, as have other crucial players in our Department, including the Coast Guard and all those who worked with the well-prepared DOT Crisis Management Center.

I hope here briefly to outline some of the key activities of our Department on September 11 and then to move to essential plans for our future.

On the morning of September 11th, on first word of the attack, I moved directly to the Presidential Emergency Operations Center in the White House. As soon as I was aware of the nature and scale of the attack, I called from the White House to order the air traffic system to land all aircraft, immediately and without exception. That was an unprecedented step. But with the risk of additional flights that might be used as terrorist weapons, I believe that it was the right and necessary step to take.

In the moments that followed my call, countless brave, tough, and smart Federal air traffic controllers worked with courageous and calm pilots and flight crews to land over 4,500 aircraft. Though all these emergency landings were entirely unplanned, they were

safely and successfully accomplished. That was an historic feat in crisis management, and it illustrated the magnificent skill of key players in our transportation systems.

This Committee should also be aware of the extraordinarily rapid response achieved with respect to all modes of transportation throughout our country on September 11th.

Thanks to elaborate simulation and preparation, the Department of Transportation's Crisis Management Center took only minutes to kick into action. The first crash occurred at 8:46 am, and the Crisis Management Center was fully operational--with secure lines of communication, initiation of security procedures, and key contacts on line--by 9 am. Then, in a pre-planned fashion, the Department rapidly secured thousands of transportation hubs and corridors across the United States--including bridges and rail lines, roads and harbors.

Of course, as we move forward, we must dramatically alter our approach. As President Bush has said: the world has changed. I add: so too has the very nature of our national transportation system.

The events of the past several days require us to take new steps to move people and commerce safely and efficiently, despite the fact that the nature of the threat has clearly changed. It is a mission we cannot afford to leave for a later time.

This Administration is already moving to restore and enhance our air transportation system. On September 13th, I announced the gradual restoration of flights within the national airspace system. We took immediate steps to develop heightened security measures to ensure the safety of airline passengers as well as people on the ground.

All of the country's major airports have resumed scheduled domestic commercial and cargo service operations, with the exception of Reagan National Airport, which remains temporarily closed. Scheduled passenger airline service is operating at about 78 percent of normal levels. General aviation operations have also resumed except for visual flight rules operations in the immediate vicinity of our nation's 30 largest airports. We are currently increasing access to international commercial and general aviation flights.

Because safety is of paramount importance, I required that heightened security measures be in place before any air service resumed. A thorough search and security check of all airplanes and airports took place before passengers are allowed to enter and board aircraft.

We discontinued curbside check-in at every airport. We discontinued off-airport check-in. We no longer allow passengers to check in for their flights at hotels or other locations. All passengers are now required to go to the ticket counters to check baggage. Only ticketed passengers and authorized personnel are allowed to proceed past airport screeners--well-wishers must stay out of the secured areas.

Let there be no doubt: we will soon be taking additional steps to increase security beyond those already taken.

Now we must deal more broadly with the aftermath of September 11th. We have already turned toward development of long-term, sustainable security improvements within our airports and on our aircraft to ensure American passengers are provided with the highest possible levels of safety.

Consistent with the strict security measures imposed upon startup last week, I announced on Sunday the creation of two Rapid Response teams to make specific recommendations for the further improvement of security within the national aviation system. Their conclusions are due October 1, at the latest. One team is focusing on ways to increase security at our nation's airports. The other is focusing on aircraft integrity and security. Among those areas that will be addressed will be making airport screening a more credible deterrent, expanding the Federal Air Marshal program, and enhancing cockpit security. Both teams are now undertaking their tasks with a sense of urgency.

As they work on these teams, our own experts at the Federal Aviation Administration and Department of Transportation will have input from a distinguished group of Americans with a wide range of expertise in many different aspects of air transportation and law enforcement.

I understand the complexity of these issues, and I know there have been numerous studies on many of these issues. Yet the larger context has changed dramatically. We now face a different security threat not only in transportation, but in all aspects of American life. We have to be willing to meet that changed threat with additional counter-measures, and still find ways to keep our transportation systems the efficient and vital circulation system of our economy. We must therefore judge our security options in a different light than we might have judged them in the past.

What I expect now are good, unambiguous answers to the new questions and heightened risks. The Department of Transportation has acted promptly in response to the changed circumstances, and we will take further actions promptly.

Broader Security Concerns

We also need to keep a broad perspective as we address both security and commerce. The events of September 11th have focused media and public attention almost exclusively on aviation, which is understandable. Yet, as Vice President Cheney has noted, the odds are good that terrorists may use entirely new lines of attack. The Department I am honored to direct is focusing on all modes of transportation, including but not limited to airplanes and airports.

Thus, under authority from the Ports and Waterways Safety Act, we have taken action to control the movement of all vessels in the navigable waters of the United States.

All ports and waterways have remained open and secure since Sept. 12 with very limited exceptions. We put pipeline operators on alert. And with the resources provided to the U.S. Coast Guard, it has performed with monumental efficiency.

In the New York City area, our employees have worked selflessly for days to bring services back, provide alternative means of access to the City, and, at the same time, guard against possible further acts of terrorism.

I want to emphasize the over-arching threat we now face. The new security measures we have already implemented -- and those we will implement both publicly and discreetly -- are not designed simply to deal with threats of further attacks like those of September 11th.

For example, the President has asked our Department to help protect the integrity of our nation's entire transportation infrastructure. And that is what we are doing. But we also have to recognize that we have to meet the challenge of new and different security threats not only in transportation, but throughout our society.

We will have to take precautions in transportation that we have never taken before, and we will have to do the same in virtually every aspect of American life. We will find ways to preserve the best of our transportation systems - the freedom of movement, the safe and efficient movement of goods and people that is so necessary to our economy. We will find ways to accomplish both heightened security and the benefits of efficient transportation system.

Economic Response

I turn now to another critical topic--maintaining the air transportation system in the face of severe financial problems. The current situation in the airline industry is that access to credit markets is greatly restricted and revenues dramatically diminished.

I would emphasize that the task at hand is not to prop up one or another of the carriers. It is not to "make whole" the industry as if September 11th had never occurred. Rather it is to recognize that this key part of the economy of this country requires new foundations in security and confidence as solid as they were once before. I believe the Federal Government has a responsibility for the safety of the public, airline passengers and crews in particular, and to ensure the foundation of security, insurance, and other necessities that will help this key part of the U.S. economy function. This nation needs a vital, viable, and competitive airline industry.

Accordingly, we are proposing on an expedited basis an initial package to provide strength, security, and confidence in air transportation.

Our proposal includes:

- \$3 billion to airlines to help offset the substantial new costs they are incurring

because of tightened security requirements.

- \$5 billion in direct and immediate payments to airlines, roughly in proportion to their size.
- Authorization for the War Risk Insurance Program to be invoked, at the President's discretion, in the domestic arena as well as the international.
- Limited modifications to certain aspects of collateral liability, in order to avert a near-term threat to the continued availability of insurance coverage. The main purpose is to give us a brief period of time in which to try to resolve that threat.

We have additional steps under consideration, some of would take additional time to fully sort out. We believe that on the measures we are now proposing, time is of the essence. We believe these proposals should move forward immediately, and we would then have additional days to consider and to consult with you on additional measures that may be needed.

I would like to close by taking this occasion to thank this Congress for its swift, bipartisan action last week in providing needed supplemental appropriations to get action underway across the Government. I look forward to of working closely with each of you as we face and meet the challenges ahead.

This completes my prepared statement. I would be pleased to respond to the Committee's questions.



RECYCLED PAPER MADE FROM 30% POST CONSUMER CONTENT

STATEMENT OF JANE F. GARVEY, ADMINISTRATOR, FEDERAL AVIATION
ADMINISTRATION BEFORE THE SUBCOMMITTEE ON AVIATION, COMMITTEE ON
TRANSPORTATION AND INFRASTRUCTURE, ON AVIATION SECURITY FOLLOWING THE
TERRORIST ATTACK ON SEPTEMBER 11TH. SEPTEMBER 21, 2001.

Chairman Mica, Congressman Oberstar, Members of the Subcommittee:

I appear before you today to discuss the events of the September 11th that were so unspeakable that they were virtually unimaginable a few weeks ago. The world has been forever changed. As President Bush said, "Great tragedy has come to us, and we are meeting it with the best that is in our country, with courage and concern for others."

As a nation, we have suffered horrific losses, but we are resolved not to allow those losses to overwhelm us. We can be proud of America's response to this crisis; the stories of heroism, generosity, and patriotism are countless and compelling. We must gain strength from these examples as we face the many challenges that lie ahead of us. On behalf of the Federal Aviation Administration (FAA) and its employees, some of who have suffered their own devastating losses, I would like to extend my sympathies to the many thousands of Americans who were victimized by the terrorists' actions. I assure you that all 48,425 employees of the FAA will continue to work night and day to make the air transportation system safe, secure, and ready to meet the needs of our travelling public. We are committed to meeting the challenges that the tragic events of September 11th present. Our energies are focused on maintaining a safe air traffic system.

The nature of the threat facing America has changed. What we faced on September 11th was a new phenomenon--hijackers taking over commercial flights for the sole purpose of turning them into human-guided terrorist bombs of massive explosive power. Given the events of last week, assumptions underlying aviation security have fundamentally changed.

We are working with others in government to develop a full picture of what happened on September 11th. Federal investigators continue to sift through the wreckage for additional information. Analysis of the flight data and cockpit voice recorders is underway. I cannot provide a detailed description of what we have been able to learn so far in an open forum. However, what I would like to do is briefly discuss how we shut down the civil air traffic system, what new security measures are in place and how we have brought our aviation system back into operation.

On the morning of September 11th, there were 4,873 instrument flight rule (IFR) flights operating in U.S. airspace. As soon as Secretary Mineta was aware of the nature and scale of the terrorist attack on New York and Washington--that we were faced with, not one, but four possible hijackings, and several other rumors of missing or unidentified aircraft--the Secretary ordered the air traffic system shut down for all civil operations. Our Air Traffic Control System Command Center (ATCSCC) sent a verbal notice to all air traffic facilities about the first suspected hijacked aircraft at 9:06 a.m. At 9:08 a.m., a written advisory was issued that "sterilized" the New York airspace, meaning that all aircraft operating in the airspace of the New York Center were ordered to leave that airspace. At 9:26 a.m., before either American Airlines Flight 77 or United Airlines Flight 93 had crashed, a national ground stop was issued that prevented any aircraft from taking off. At 9:45 a.m. all airborne aircraft were told to land at the nearest airport--the first time in our history that all civil aircraft in the United States were grounded. At 10:39 a.m., a formal Notice to Airmen (NOTAM) was issued closing all operations at all airports.

In response to last week's unprecedented attacks, the FAA substantially increased the required security

measures for U.S. airports and U.S. air carriers and foreign carriers with flights to the U.S. These measures were implemented immediately. Some are visible to the public, others are not. As you know, before we allowed our airports to reopen and air carriers to resume operations last week, airports and carriers had to meet these stringent new security measures through a certification process. I must tell you that we have had an unprecedented level of cooperation between the Federal government and the airport operators and carriers to implement these procedures so quickly and effectively.

Although the investigation of how the hijackers were able to gain control of the aircraft and what means they used to do so is still ongoing, it is apparent that enhanced security measures are essential to ensuring the security and safety of the U.S. travelling public. Following the attacks, the FAA ordered all airport terminals evacuated and required a thorough search for explosives and other dangerous weapons or objects in the terminal, using K-9 teams if they were available. Similarly, all aircraft were thoroughly inspected. Before the airports reopened (except for Reagan National Airport) and air carriers returned to the skies, new security requirements were in place.

Passengers will now find they have to adjust to new restrictions and go through more steps before boarding an aircraft—and they must adjust their arrival times at airports accordingly. Vehicles near terminals are now monitored more closely, and unauthorized vehicles near the terminal area will be removed. We have ordered the discontinuance of curbside check-in and all off-airport check-in locations. We can no longer allow passengers to check in for their flights at hotels or other locations. Instead, we ask that all passengers with luggage go to the ticket counters to check in. Passengers without checked-in luggage can check in at the gate, but are required to show boarding passes or e-ticket confirmation letters and photo identification to pass through security checkpoints. All planes must undergo a thorough search and security check before passenger boarding can begin, and we must reserve boarding areas for passengers only. Only ticketed passengers will be allowed to proceed past airport screeners to board their flights.

At all airports, increased numbers of uniformed and plainclothes security and law enforcement officers have been deployed to provide greater deterrence, surveillance, and response in the case of an emergency. Access points to secured areas of airports have been reduced to the operational minimum and airports have increased random security checks and ID checks throughout their entire terminal areas. Knives or other dangerous objects may no longer be sold or used in the “sterile” terminal areas—those areas beyond the security checkpoints. Similarly, all cutting instruments, including knives, scissors, and razor blades, plastic or otherwise, are banned from carry-on luggage. Although initially no cargo or mail was permitted on passenger flights, we have now allowed a carrier to accept cargo from shipping companies with well-documented, established relationships with the air carrier, or from freight forwarders with FAA-approved security programs. Letter class mail, certified as such by the U.S. Postal Service, is also being accepted for transport on passenger flights.

With respect to cargo only flights, we have allowed them to resume operations after thorough searches of all aircraft and cargo containers. Carriers must verify the identification of and search crewmembers as well as guard and secure planes overnight.

Finally, I would like to briefly mention the FAA’s Federal Air Marshal (FAM) program. It has been a valuable component in our efforts to deter terrorist hijackings outside the U.S., which is where we believed the main threat to be, based upon available intelligence. In addition to their deterrent value, Federal Air Marshals are extremely well prepared to deal with any attempt to hijack an aircraft upon which they are deployed. The events of September 11th clearly show us that the threat within the United States of terrorist team hijackings is much higher than we had previously known and that we must make every possible effort to prevent further attacks and to deal with them should they occur. Accordingly, the President has directed the expansion of the FAM program to provide a substantially increased level

of coverage within the United States.

Because some aspects of this program are highly sensitive, I cannot provide details of this action in an open forum. What can be said publicly is that Federal Air Marshals are a full-time dedicated force that is continuously deployed throughout the world on all the major U.S. carriers in areas where terrorist activities indicate the highest probability of attacks. We believe that the FAM program is and will continue to be a critical element in enhancing the security of our air transportation system.

It has only been a few days since these enhanced security measures were ordered. As air carrier operations gradually increase and the system is brought back to a more normal level of activity, we will continuously monitor the effectiveness of these measures and work with airports and carriers to refine them, and expand them, if necessary. At the same time, we recognize that there are still lessons to be learned from the events of September 11th. We know that, in addition to the steps we took immediately following the attacks, we also need a more deliberative examination of what we have done and what we still can do to provide all Americans with the highest possible levels of safety and security. To that end, last Sunday, Secretary Mineta created two Rapid Response Teams to provide in the near term other recommendations for improving security in the national aviation system. Working with senior DOT and FAA experts will be eight national leaders from the aviation and law enforcement communities—individuals who this Committee knows quite well. One Team will focus on increasing security at the nation's airports; the other will examine security on board an aircraft, with particular attention to cockpit access. We look forward to their recommendations, which are due no later than October 1st.

As unprecedented as shutting down the civil aviation system was, bringing it back up was a challenge we have never before faced. As Secretary Mineta directed, we have been working to incrementally restore access to our customers and the users of our National Airspace System (NAS), balancing national security, economic and operational considerations. Once new security restrictions were met, airports (with the exception of Reagan National Airport), and commercial airlines were authorized to resume civil operations, including international flights that had been stranded outside our borders, and flights that had been suspended. Repositioning of aircraft was also authorized.

We began by coordinating and authorizing all military operations, and prioritizing other aviation operations as follows:

- recovery of diverted commercial aircraft;
- repositioning of commercial aviation aircraft;
- resumption of domestic U.S. flag carrier operations;
- resumption of cargo operations;
- resumption of air taxi and IFR general aviation;
- opening of Alaska airspace to all IFR and visual flight rule (VFR) operations;
- resumption of Hawaii IFR operations;
- resumption of Canadian/American international flights;
- resumption of international U.S. Flag carrier operations;
- resumption of IFR business flight operations such as agricultural flights/crop dusters and scenic tour flights;
- resumption of certain foreign-flag IFR overflights of the U.S.; and
- resumption of most VFR general aviation (Part 91) operations (exclusions include VFR operations within the immediate vicinity of our nation's 30 largest airports, banner towing, traffic watch/reporting, airships/blimps, news reporting flight training, and sight seeing operations conducted for compensation).

We are continuing to work to restore more international commercial operations as they come into compliance with the new security requirements, and to review the remaining restrictions on VFR general aviation operations and prioritize their return to the NAS.

Conclusion

Mr. Chairman, I want to assure you that the Secretary and I are doing everything in our power to bring the Nation's air transportation system back into full operation with the highest levels of safety possible. Working together--Government, industry and American citizens--we will do it. In a democracy, there is always a balance between freedom and security. Our transportation systems, reflecting the value of our society, have always operated in an open and accessible manner. And, they will do so again.

Finally, Mr. Chairman, the President said last week "[A] diversity introduces us to ourselves. . . . [O]ur fellow Americans are generous and kind, resourceful and brave." I would like to include the men and women of the FAA and DOT in that company.

That concludes my prepared remarks. I would be happy to answer any questions you may have.

1 **COPY**

UNITED STATES DISTRICT COURT

2 DISTRICT OF NEVADA

3
4 COUNTY OF CLARK, a political)
5 subdivision of the State of)
6 Nevada, on behalf of CLARK)
COUNTY DEPARTMENT OF AVIATION,)

7 Plaintiff,)

8 vs.)

NO. CV-S-02-1258-KJD-RJJ

9 FACTORY MUTUAL INSURANCE)
10 COMPANY, a Rhode Island)
corporation, and Does 1-10,)

11 Defendants.)
12
13

14 **VIDEOTAPED RULE 30(b)(6) DEPOSITION OF CLARK COUNTY**
15 **DEPARTMENT OF AVIATION, Represented by RANDALL H. WALKER**
16 **and VIDEOTAPED DEPOSITION OF RANDALL H. WALKER**

Taken on Tuesday, April 13, 2004

17 9:19 a.m.

18 At McCarran International Airport
19 5757 Wayne Newton Boulevard
20 Las Vegas, Nevada

21
22
23
24
25 Reported by: Michelle C. Johnson, CCR 771, RPR-CRR

APPEARANCES:

For the Plaintiff:

STEPHEN V. MASTERSON, Attorney at Law
HOWREY, SIMON, ARNOLD & WHITE LLP
550 South Hope Street, Suite 1100
Los Angeles, California 90071-2627

For the Defendant:

SCOTT G. JOHNSON, Attorney at Law
ROBINS, KAPLAN, MILLER & CIRESI LLP
2800 LaSalle Plaza
800 LaSalle Avenue
Minneapolis, Minnesota 55402-2015

Also Present: Becky Ulrey, Certified Legal Videography

* * * * *

I N D E X

WITNESS

PAGE

RANDALL H. WALKER

EXAMINATION

BY MR. JOHNSON

5

E X H I B I T S

NUMBER	DESCRIPTION	MARKED FOR ID
Walker		
1	"Notice of Deposition of Clark County Department of Aviation"	10
2	Internet printout of 9/12/01 "News Release" (FM 00021)	23
3	Internet printout of 9/13/01 "Statement of U.S. Secretary of Transportation Norman Y. Mineta" (FM-C 00214)	25
4	Internet printout of 9/13/01 Las Vegas Sun article, "McCarran Airport Reopens Today"	26
5	FM Global Policy No. UA864 (FM-C 00013 - 68)	51
6	11/7/01 "Property Loss Notice" (FM-C 00484 - 487)	54
7	11/27/01 letter to Walker from Casillas (FM-C 00203 - 207)	65
8	12/11/01 letter to Casillas from Walker (FM-C 00194)	66
9	1/2/02 letter to Walker from Casillas (FM-C 00190 - 193)	70
10	2/11/02 letter to Walker from Casillas (FM-C 00177 - 179)	71
11	2/22/02 letter to Casillas from Walker, with attachments (FM-C 00167 - 175)	73
12	4/16/02 letter to Johnson from Casillas, with attachments (FM-C 00111 - 120)	75

1 THE VIDEOGRAPHER: This is the beginning of the
2 deposition of Randall Walker. Today's date is
3 April 13th, 2004, and the time on the video monitor is
4 9:18 a.m. We are at the administration offices at
5 McCarran International Airport, in Las Vegas, Nevada.

6 And this case is in the United States District
7 Court, District of Nevada, Case
8 No. CV-S-02-1258-KJD-RJJ, and it's entitled Clark --
9 sorry -- County of Clark, a political subdivision of the
10 State of Nevada, on behalf of Clark County Department of
11 Aviation versus Factory Mutual Insurance Company, et al.

12 My name is Becky Ulrey, from Certified Legal
13 Videography, in Las Vegas, Nevada, and the court
14 reporter is Michelle Johnson, from Western Reporting
15 Services, Incorporated, in Las Vegas, Nevada.

16 Will counsel please identify yourselves for
17 voice identification.

18 MR. JOHNSON: Scott Johnson, representing
19 Factory Mutual Insurance Company.

20 MR. MASTERSON: Steve Masterson, from Howrey
21 Simon, Arnold & White, representing Clark County
22 Department of Aviation.

23 THE VIDEOGRAPHER: The reporter will now
24 administer the oath.

25 * * * * *

RANDALL H. WALKER,
having been first duly sworn, was
examined and testified as follows:

EXAMINATION

BY MR. JOHNSON:

Q. Please state your full name.

A. Randall H. Walker.

Q. And where do you live, sir?

A. In Henderson, Nevada.

Q. Can you give us your address, please?

A. 12 --

MR. MASTERSON: If you need to contact him,
business address I think is probably better.

BY MR. JOHNSON:

Q. Can you give us your business address, please?

A. McCarran airport.

Q. Las Vegas, Nevada?

A. Yeah, Las Vegas, Nevada.

Q. I introduced myself earlier. My name is Scott
Johnson. I'm the attorney representing Factory Mutual
Insurance Company in the matter.

Have you had your deposition taken before?

A. Yes.

Q. On how many occasions?

A. A number. I never kept count. More than a

1 Q. Okay. What was that?

2 A. I was systems analyst for Exxon Oil Company at
3 Houston, Texas from May of 1977 until I went to work for
4 the county.

5 Q. Prior to that, you were at school, right?

6 A. Prior to that, I was a student. I had a few
7 part-time jobs, but I don't think they're relevant.

8 MR. JOHNSON: I'm going to mark as Exhibit 1 a
9 deposition notice.

10 (Walker Exhibit 1 was marked for
11 identification.)

12 BY MR. JOHNSON:

13 Q. This is a Notice of Deposition to the Clark
14 County Department of Aviation. And I understand that
15 you are going to be the designated witness to testify to
16 these subject matters. Is that right?

17 A. Yes, that's what I understand.

18 Q. Have you seen Exhibit 1 before?

19 A. Yes, I have.

20 Q. When did you first see it?

21 A. I don't recall exactly when I first saw it, but
22 I saw it again yesterday.

23 Q. What did you do to prepare to give testimony on
24 the six subject matters in Exhibit 1?

25 A. Talked to my attorney here to my right, and

1 in a manual or a book somewhere.

2 Q. Is that how security directives are kept, in a
3 manual?

4 A. Generally, they keep track of them in a -- in a
5 binder.

6 Q. Let's move on to subject matter 2 in Exhibit 1:

7 "The manner by which CCDOA claims that
8 ingress to or egress from its airports was
9 prevented on September 11th through the
10 13th, 2001."

11 Can you describe the manner in which CCDOA
12 claims that ingress to or egress from its airports was
13 prevented on September 11th, 2001?

14 A. First off, all airplanes were prohibited by
15 federal order from flying, so no airplanes could arrive
16 at our airport or leave from our airport under federal
17 order.

18 In addition to that, the terminal needed to be
19 vacated for security reasons, so the terminal was closed
20 to all nonbadged individuals, and the roadways into the
21 airport were blocked and -- to allow the airport to be
22 able to have control of the airport in a sterile
23 environment and be able to do its security checks in
24 accordance with the FAA directives.

25 Q. So you're saying planes could not arrive or

1 terminal.

2 Q. What security rules are you referring to there?

3 A. Those would have been whatever directives came
4 out, security directives, subsequent to 9/11 in that
5 time period.

6 Q. Who determined that the roadways into the
7 airport should be blocked?

8 A. That would have been Rosemary's decision.

9 Q. And why was that decision made; do you know?

10 A. You'll need to talk to her. I could surmise,
11 but it would be better if you ask her.

12 Q. When do you claim that the prevention of
13 ingress and egress by aircraft began?

14 A. As soon as the FAA grounded all the aircraft.

15 Q. Do you mean at the time it issued its order?

16 A. At the time it issued its order. Planes that
17 were on its way to Las Vegas never made it to Las Vegas;
18 planes that were supposed to leave couldn't take off.

19 Q. And when do you claim that the prevention of
20 ingress and egress by aircraft ended?

21 A. When the FAA authorized aircraft to begin
22 operations into McCarran once again.

23 Q. And when was that?

24 A. I believe that was on the 13th.

25 Q. Do you recall what time of day on the 13th?

1 Q. Are you aware of any planes that took off after
2 the FAA order?

3 A. No, not on the 11th.

4 Q. What prevented a plane from taking off from any
5 of the CCDOA airports on September 11 after the order?

6 A. It was in violation of federal directives.

7 Q. There was nothing wrong with the runways at any
8 of the airports, right?

9 A. No, runways all functioned fine.

10 Q. But there was an order from the FAA that said
11 planes could not take off, right?

12 A. Planes were prohibited from being in the air
13 space, so therefore they couldn't take off or land.

14 Q. Do you know if any planes took off from the
15 other general aviation airports that CCDOA operates?

16 A. I'm not personally aware. They should not
17 have, but I'm not personally aware whether they did or
18 not.

19 Q. Did any planes land at McCarran on
20 September 11, 2001?

21 A. As indicated before, certainly before the order
22 was given, we had normal operations. And I believe
23 after the order was given, there would have been planes
24 who landed because this would have been the closest
25 airport that would have been able to safely handle that

1 Q. Let's move on to the third subject matter in
2 Exhibit 1:

3 "The existence of any physical loss or
4 damage to property at any of CCDOA's
5 airports on September 11, 2001."

6 Was there any damage at any of the CCDOA
7 airports on September 11, 2001?

8 A. Are you talking about actual physical damage?

9 Q. Right.

10 A. No, not that I'm aware of.

11 Q. Let's move on to exhibit -- I'm sorry, subject
12 matter 4 in Exhibit 1:

13 "The existence of any immediately
14 impending physical loss or damage to
15 property at any of CCDOA's airports on
16 September 11, 2001."

17 Are you aware of any immediately impending
18 physical loss or damage at any of the CCDOA airports on
19 September 11, 2001?

20 A. Not any more so than any other property
21 throughout the United States, given the fact that
22 airplanes had been crashing into buildings.

23 Q. What does that mean?

24 A. Well, airplanes had been crashing into
25 buildings. That was a concern they had for any

1 A. I don't recall what they were. That would be
2 in the manual.

3 Q. Was the county placed on any alert on
4 September 11, 2001?

5 A. No, I do not know.

6 Q. Let's move on to subject No. 5 in Exhibit 1.
7 That's:

8 "The existence of physical loss or
9 damage to property at locations of CCDOA's
10 direct suppliers or customers on
11 September 11th, 2001."

12 Was there any physical loss or damage at the
13 locations of any of CCDOA's direct suppliers or
14 customers on September 11, 2001?

15 A. Certainly. Airlines are our customers; they
16 had significant damage.

17 Q. What was their damage?

18 A. I know some of them had offices in the World
19 Trade Center, for example.

20 Q. Who had offices in the World Trade Center?

21 A. I know Delta did specifically.

22 Q. Anybody else?

23 A. Not that I recall. But I know Delta did. Some
24 travel agencies I know were in the World Trade Center.
25 New York is a very popular market for Las Vegas in terms

1 of customers, and there were travel-related tour
2 wholesalers, travel agents and those kinds of things
3 that had offices in the World Trade Center, yes.

4 Q. Any other customers or suppliers that were
5 damaged on September 11, 2001?

6 A. I don't specifically know every single one, no.

7 Q. Are you saying that the CCDOA airports were
8 closed because of the damage to the Delta office in the
9 World Trade Center and those travel agencies in the
10 World Trade Center?

11 A. I think the CCDOA was closed because of the
12 orders from the Federal Aviation Administration that
13 shut down the national air system.

14 Q. Let's move on to the sixth subject matter in
15 Exhibit 1:

16 "The extent of any loss or damage to
17 CCDOA caused by any physical loss or
18 damage to property at locations of CCDOA's
19 direct suppliers or customers on
20 September 11, 2001."

21 You identified the Delta office in the World
22 Trade Center and some travel agencies. What was the
23 effect of the damage on the Delta office or to the Delta
24 office on CCDOA?

25 A. You mean a direct, their office was damaged so

1 Richard J. Pocker
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3 Las Vegas, NV 89108
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7 800 LaSalle Avenue, Suite 2800
Minneapolis, MN 55402
8 Telephone: (612) 349-8500
Facsimile: (612) 339-4181
9

10 Attorneys for Defendant Factory Mutual Insurance Company
11
12

13 UNITED STATES DISTRICT COURT
14 DISTRICT OF NEVADA

15 COUNTY OF CLARK, A POLITICAL
16 SUBDIVISION OF THE STATE OF
17 NEVADA, ON BEHALF OF CLARK
COUNTY DEPARTMENT OF
18 AVIATION,

19 Plaintiff(s),

20 vs.

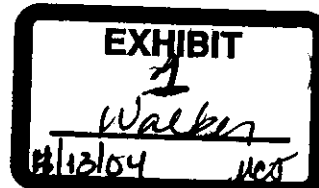
21 FACTORY MUTUAL INSURANCE
COMPANY, a Rhode Island Corporation,
22 and Does 1-10,

23 Defendant(s).
24

CASE NO. CV-S-02-1258-KJD-RJJ

NOTICE OF DEPOSITION OF CLARK
COUNTY DEPARTMENT OF
25 AVIATION

26 TO PLAINTIFF COUNTY OF CLARK, A POLITICAL SUBDIVISION OF THE
STATE OF NEVADA, ON BEHALF OF CLARK COUNTY DEPARTMENT OF AVIATION:
27
28



1 PLEASE TAKE NOTICE that on April 15, 2004, at 2:00 P.M., at the McCarran
2 International Airport, 5757 Wayne Newton Blvd., Las Vegas, Nevada, 89119, in a conference
3 room to be determined, Defendant Factory Mutual Insurance Company, through its attorneys of
4 record, will take the deposition Clark County Department of Aviation ("CCDOA") through duly
5 designated person(s) most knowledgeable regarding:

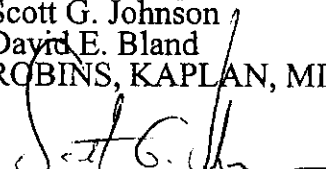
- 6 1. All orders on which CCDOA bases any claim for damages in this litigation
7 including, but not limited to, the date of each such order, the agency issuing each
8 such order, the identity of the recipient of each such order, and the actions taken
9 by CCDOA in response to each such order;
- 10 2. The manner by which CCDOA claims that ingress to or egress from its airports
11 was prevented on September 11-13, 2001;
- 12 3. The existence of any physical loss or damage to property at any of CCDOA's
13 airports on September 11, 2001;
- 14 4. The existence of any immediately impending physical loss or damage to property
15 at any of CCDOA's airports on September 11, 2001;
- 16 5. The existence of any physical loss or damage to property at locations of CCDOA's
17 direct suppliers or customers on September 11, 2001;
- 18 6. The extent of any loss or damage to CCDOA caused by any physical loss or
19 damage to property at locations of CCDOA's direct suppliers or customers on
20 September 11, 2001.

21 The deposition will be taken before a certified reporter or other officer authorized by law
22 to take depositions, duly authorized to administer oaths and transcribe the testimony of the
23 deponent and will be videotaped. The deposition will continue from day to day until completed.
24 You are invited to attend and cross-examine.

25
26 Dated: March 8, 2004.

Richard J. Pocker
Dickerson, Dickerson, Consul & Pocker

1
2 Patrick E. Shipstead
3 Scott G. Johnson
4 David E. Bland
5 ROBINS, KAPLAN, MILLER & CIRESI L.L.P.

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SCOTT G. JOHNSON
Attorneys for Defendant
Factory Mutual Insurance Company



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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

COUNTY OF CLARK, a political)
subdivision of the State of)
Nevada, on behalf of CLARK)
COUNTY DEPARTMENT OF AVIATION,)

Plaintiff,)

vs.)

NO. CV-S-02-1258-KJD-RJJ

FACTORY MUTUAL INSURANCE)
COMPANY, a Rhode Island)
corporation, and Does 1-10,)

Defendants.)

VIDEOTAPED DEPOSITION OF ROSEMARY VASSILIADIS

Taken on Thursday, April 15, 2004

10:12 a.m.

At McCarran International Airport
5757 Wayne Newton Boulevard
Las Vegas, Nevada

Reported by: Michelle C. Johnson, CCR 771, RPR-CRR

APPEARANCES:

For the Plaintiff:

STEPHEN V. MASTERSON, Attorney at Law
HOWREY, SIMON, ARNOLD & WHITE LLP
550 South Hope Street, Suite 1100
Los Angeles, California 90071-2627

For the Defendant:

SCOTT G. JOHNSON, Attorney at Law
ROBINS, KAPLAN, MILLER & CIRESI LLP
2800 LaSalle Plaza
800 LaSalle Avenue
Minneapolis, Minnesota 55402-2015

Also Present: Becky Ulrey, Certified Legal Videography

* * * * *

3

I N D E X

WITNESS

PAGE

ROSEMARY VASSILIADIS

EXAMINATION

BY MR. JOHNSON

5

E X H I B I T S

NUMBER DESCRIPTION

MARKED FOR ID

Vassiliadis

1	Internet printout of 8/12/02 FAA News "Fact Sheet, Chronology of Events on September 11, 2001" (FM 00004 - 5)	8
2	Internet printout of 9/11/01 Las Vegas - McCarran International Airport News Release, "Media Advisory" (FM 00019)	22
3	Internet printout of 9/14/01 News, U.S. Department of Transportation article, "Secretary Mineta Reopens Skies to General Aviation" (FM-C 00213)	38

1 THE VIDEOGRAPHER: This is the beginning of the
2 deposition of Rosemary A. Vassiliadis. Today's date is
3 April 15th, 2004, and the time on video monitor is
4 10:11 a.m. We're in the administrative offices at
5 McCarran International Airport in Las Vegas, Nevada.

6 And this case is in the United States District
7 Court, District of Nevada, Case
8 No. CV-S-02-1258-KJD-RJJ, entitled County of Clark, a
9 political subdivision of the State of Nevada, on behalf
10 of Clark County Department of Aviation versus Factory
11 Mutual Insurance Company, et al.

12 My name is Becky Ulrey, from Certified Legal
13 Videography, and the court reporter is Michelle Johnson,
14 from Western Reporting Services, Incorporated.

15 Will counsel please identify yourselves for
16 voice identification.

17 MR. JOHNSON: Scott Johnson, representing
18 Factory Mutual Insurance Company.

19 MR. MASTERSON: Steve Masterson, from Howrey,
20 Simon, Arnold & White, representing Clark County
21 Department of Aviation.

22 THE VIDEOGRAPHER: The reporter will please
23 administer the oath.

24 ROSEMARY VASSILIADIS,
25 having been first duly sworn, was

1 examined and testified as follows:

2 EXAMINATION

3 BY MR. JOHNSON:

4 Q. Can you please state your full name.

5 A. Rosemary Vassiliadis.

6 Q. What is your present business address?

7 A. 5757 Wayne Newton Boulevard. I'm sorry, we go
8 by the PO Box usually.

9 Q. That's McCarran International Airport, right?

10 A. Yes.

11 Q. Have you had your deposition taken before?

12 A. No.

13 Q. Just let me give you a few of the basic rules
14 of the deposition. You've probably heard these already,
15 but I'll just remind you of them in the event that
16 you've forgotten them.

17 I'll be asking you some questions this morning.
18 If at any time my questions aren't clear to you or you
19 don't understand them, please let me know, and I'll
20 attempt to restate the question for you. All right?

21 A. Okay.

22 Q. Otherwise, I'm going to have to assume that
23 you've understood my question. All right?

24 A. All right.

25 Q. All of your answers must be with words, rather

1 Q. To the best of your recollection, was it a
2 little before 8 a.m. Pacific time?

3 MR. MASTERSON: Objection, vague and ambiguous
4 as to "it."

5 BY MR. JOHNSON:

6 Q. When did you learn that the FAA had banned
7 takeoffs of all civilian aircraft regardless of
8 destination?

9 A. The best that I can remember was sometime that
10 morning. So I got to the airport a little after
11 8:00 a.m. our local time, and it was sometime that
12 morning. I just don't remember what time exactly.

13 Q. Did you become aware of the order for aircraft
14 to land at the nearest airport first? Is that the first
15 order that you learned of?

16 A. I would believe so, yes.

17 Q. And then at some point, you received security
18 directives from the FAA, right?

19 A. That is correct.

20 Q. And how were they received?

21 A. They came to our local -- it was a civil
22 division at that time of the FAA. And our special agent
23 in charge received them directly from a secured fax
24 machine, and she brought them over and hand-delivered
25 them to me.

1 Q. And this was a letter before noon on
2 September 11, 2001, right?

3 A. It was, yes, in that morning time.

4 Q. What did these security directives say?

5 A. Well, there were several of them.

6 Q. Okay.

7 A. And one of -- they went from indicating --
8 letting us know that the national air space was closed,
9 what we were to do on airport property with commercial
10 aircraft and general aviation aircraft, and then they
11 proceeded as the day went on, what we needed to do as an
12 airport operator.

13 Q. So that wasn't just one security directive, it
14 was several?

15 A. It was -- correct.

16 Q. How many? Can you estimate for me?

17 A. Not on that day. We received so many in that
18 period. The first day, I would just guesstimate a half
19 dozen.

20 Q. Are these security directives that you
21 mentioned, are they able to be shown to me, for example?

22 A. No, they're not. They are security-sensitive
23 information.

24 Q. Are you able to describe the contents of them?

25 A. Generally.

1 Q. Generally, what were airports supposed to do
2 because the national air space was closed?

3 A. Airports needed to clear everybody out, and we
4 had to recertify and sterilize the airport. So in order
5 to do that, we had to, again, clear everyone out, which
6 we did, including vehicles. I mean, we had to tow
7 vehicles out of the garage to be on a perimeter. And
8 they gave us each and every point that we needed to do.
9 And then go through a sterilization and a
10 recertification process.

11 Q. When did you clear everyone out of McCarran?

12 A. We did that the next day, on the 12th.

13 Q. So people were able to stay at McCarran on
14 September 11th?

15 A. There were people in the terminal, yes.

16 Q. Passengers who couldn't get on their planes and
17 stuff, right?

18 A. Correct.

19 Q. And then on September 12th, you actually
20 cleared the terminal?

21 A. Yes. We started to clear the terminal on the
22 11th, knowing that the air space was going to remain
23 closed. Again, a lot of this was just real-time
24 information coming, and so the next set of information
25 superceded what we were currently doing.

1 Q. When on September 11th did you start clearing
2 the terminal?

3 A. Later that -- late afternoon, early evening.
4 Knowing that planes were not going to take off, we
5 worked with the local community and the convention
6 authority to get people back to hotels because we knew
7 that there was not a chance for them to get to -- to go
8 back home.

9 Q. And before the terminal was cleared, did some
10 of the concessionaires remain open?

11 A. You know, I really don't know. I wasn't
12 downstairs. They -- I don't know.

13 Q. And then you had to sterilize the airport.
14 What does that mean?

15 A. That means we had to clear everybody and every
16 unidentified object out.

17 Q. When was that done?

18 A. That was done -- it started on the 12th and
19 proceeded to the 13th. It includes property as well,
20 not just buildings.

21 Q. What do you mean it includes property not
22 just --

23 A. Perimeter areas as well, just not physical
24 buildings.

25 Q. Approximately when did it start on September

1 12th?

2 A. I'm just guestimating that it started early
3 afternoon.

4 Q. And you completed it sometime on September
5 13th?

6 A. Yes.

7 Q. Approximately when?

8 A. In the early hours, early morning hours.

9 Q. And then you also mentioned you had to be
10 recertified.

11 A. That's correct.

12 Q. What does certification mean?

13 A. The ability to operate, to be the public use
14 facility that we are.

15 Q. Is that an FAA certification?

16 A. That is correct.

17 Q. What was involved in the recertification?

18 A. We had to fulfill all the measures of our
19 airport security plan, which was also a
20 security-sensitive document, but it is certified and
21 approved by the FAA. Every airport has to submit that.
22 In addition -- in addition to that, there were
23 additional measures that we had to go through that came
24 through -- that came to us by these security directives.

25 Q. There were additional security measures that

1 Q. Do you remember any other security directives
2 that you can just describe generally for me that you
3 received on September 11, 2001?

4 A. All the security directives that we received
5 were measures to secure each property. You know, each
6 airport. And that was what was contained in them, the
7 measures that we had to take to assure the best that we
8 could that there wasn't an act of terrorism being
9 planned for that location. I can't really get into the
10 specifics of how they directed us and exactly what they
11 directed us to do.

12 Q. Because that's confidential, right?

13 A. Because that's security sensitive, correct.

14 Q. Did you retain copies of these security
15 directives?

16 A. Yes.

17 Q. Do they go into a book of some sort?

18 A. They go into a secure file.

19 Q. You still have them today?

20 A. Actually, my airport security manager retains
21 that for me.

22 Q. Did any planes take off from McCarran on
23 September 11, 2001?

24 MR. MASTERSON: Objection, vague and ambiguous
25 as to time.

1 property on which it was standing on. So we secured the
2 gates and all the entry and exit points; they secured
3 their aircraft.

4 Q. So when you talked about having to sterilize
5 the airport, you didn't have to worry about the planes?

6 MR. MASTERSON: Objection, vague and ambiguous
7 as to "worry about."

8 BY MR. JOHNSON:

9 Q. When you talked about sterilizing the airport,
10 did you also have to the sterilize the aircraft that
11 were parked --

12 A. I did not. The airport operator did not.

13 Q. Okay. Were there any flights leaving McCarran
14 on September 11th that were carrying blood or medical
15 supplies to New York or Washington, D.C.?

16 A. I do not know. That would be the airlines.

17 Q. You're not aware of any, right?

18 A. I don't know what their normal -- the cargo
19 operations are.

20 Q. Were you aware of any threats, terrorist
21 threats, against McCarran International on September 11,
22 2001?

23 A. No.

24 Q. Other than the security directives that you
25 already told me about, were there any other orders that

1 Q. Were airline employees at the terminal on
2 September 12th?

3 A. I believe many of them were. Certainly, the
4 station managers were.

5 Q. What are the station managers?

6 A. They're the highest person in charge of that
7 particular airline company at this station here locally.

8 Q. How many airlines use McCarran?

9 A. A little over 40.

10 Q. And these people that you mentioned, they were
11 able to get through the roadblocks, right?

12 A. Yes.

13 Q. Take a look at -- I guess it's Walker Exhibit
14 2. You'll see a pile of Walker exhibits.

15 This is another McCarran News Release, this one
16 dated September 12, 2001. Right?

17 A. Yes.

18 Q. It talks about, in the first paragraph, a
19 directive from the FAA to allow airlines to begin
20 ferrying empty aircraft in anticipation of a start-up on
21 operations on September 13, 2001, right?

22 A. Yes.

23 Q. Do you remember when that directive was
24 received?

25 A. Let me think. I would guesstimate shortly

1 before we released this.

2 Q. Do you have an estimate of when you released
3 Walker Exhibit 2?

4 MR. MASTERSON: Objection, calls for
5 speculation.

6 THE WITNESS: Yeah, I don't.

7 BY MR. JOHNSON:

8 Q. The second paragraph says:

9 "Residents may see extremely limited
10 flight activity at McCarran International
11 Airport in the overnight hours as a result
12 of this directive."

13 Was there any such activity?

14 A. There was -- we did have three aircraft that
15 were ferried off of our property, off of the airport,
16 containing no passengers, to get them to wherever they
17 were directed to go.

18 Q. And those three aircraft flew out of McCarran
19 sometime on September 12th?

20 MR. MASTERSON: Objection, calls for
21 speculation.

22 THE WITNESS: I don't recall.

23 BY MR. JOHNSON:

24 Q. Do you remember what --

25 A. I really thought it was Thursday, that evening.

1 Q. You thought the fer- --

2 A. That's what I recollect.

3 Q. Do you remember what three aircraft were
4 ferried off the property?

5 A. No, I don't.

6 Q. Did any aircraft reposition to McCarran on
7 September 12, 2001?

8 A. No.

9 Q. And in the third paragraph of Walker Exhibit 2,
10 it says that you anticipated that airport facilities may
11 open as early at 5:00 a.m. Pacific Standard Time.

12 Did that in fact occur?

13 A. We did open that morning. I don't recall the
14 exact time.

15 Q. What was involved in the reopening? Roadblocks
16 were removed, right?

17 A. It was the series that I mentioned before. We
18 had to fulfill all aspects of our airport security plan,
19 in addition to several measures that were given to us by
20 the FAA.

21 Q. Take a look at Walker Exhibit 3, please. This
22 is a statement of U.S. Secretary of Transportation,
23 Norman Mineta, dated September 13, 2001.

24 Have you seen this before?

25 A. I'm sure I have.

1 Q. Does this refresh your recollection that the
2 national air space was reopened effective 11:00 a.m.
3 Eastern time Thursday?

4 A. I must have been off a whole day.

5 Q. That would have been 8:00 a.m. Pacific time,
6 right?

7 A. That's correct.

8 Q. Do you know whether McCarran opened before
9 8:00 a.m. Pacific time on Thursday, September 13th?

10 A. I believe that we did, to allow the passengers
11 to be processed. We did not resume normal activity. We
12 did not go right to our normal daily flight activity,
13 however.

14 Q. I think there is mention in one of these
15 articles that McCarran was one of the first airports to
16 be recertified.

17 A. That's correct.

18 Q. Like in the top ten somewhere, right?

19 A. I don't know. They would never tell us.

20 Q. What's your best estimate of when that
21 recertification occurred?

22 MR. MASTERSON: Objection, calls for
23 speculation.

24 BY MR. JOHNSON:

25 Q. You can answer.

1 A. I believe it was sometime that morning.

2 Q. The morning of September 13, 2001?

3 A. That Thursday.

4 Q. Before you reopened, right?

5 A. I thought you just asked me when did we reopen.

6 Q. No, it was actually when --

7 A. When did we recertify.

8 Q. Right.

9 A. Oh, yes, absolutely.

10 You'll have to forgive me, we were here around
11 the clock; one day just bled into another day without
12 any date ever being recorded.

13 Q. Do you recall any planes taking off from
14 McCarran on Thursday, September 13th?

15 A. Well, yes. We had limited activity; I do not
16 recall which ones.

17 Q. Do you remember when the first one was?

18 A. No.

19 Q. Did planes land at McCarran on September 13th?

20 A. Yes.

21 Q. Do you remember when the first one was?

22 A. No.

23 Q. Were you involved at all in CCDOA's insurance
24 claim to Factory Mutual?

25 A. Not directly in the preparation of the claim,

1 A. Okay.

2 Q. Walker Exhibit 4 is a September 13, 2001
3 article from the Las Vegas Sun entitled, "McCarran
4 Airport Reopens Today."

5 I don't know if you've seen this before or not.

6 A. I have.

7 Q. Looks like in the fourth paragraph Hilarie Grey
8 talked about some of those repositioning flights that
9 you had mentioned.

10 A. Uh-huh. Yes.

11 Q. Does that refresh your recollection, it says:

12 "There were two such flights Wednesday
13 night: a Southwest Airlines flight that
14 arrived, and a Federal Express cargo plane
15 that departed."

16 A. I had thought there were three.

17 Q. And Wednesday night was September 12, 2001,
18 right?

19 A. Correct.

20 Q. And at the bottom of the first page, continuing
21 on to the second page, there are some, I guess, changes.
22 Talks about -- the first one is a 300-foot perimeter has
23 been established for parked vehicles. The next one was
24 curbside check-ins had been suspended. Third one, there
25 will be more frequent hand searches on carry-on baggage.

1 Fourth one, there will be increased presence of
2 plainclothes and uniformed security officers. Fifth one
3 is passengers will be required to show a ticket for a
4 flight and identification in order to pass through
5 security checks for the gates. And the sixth one is
6 persons greeting arriving passengers won't be allowed to
7 go past security checkpoints.

8 Can you tell me whether those were part of the
9 new security directives that CCDOA received?

10 A. Yes, they were.

11 Q. I think you mentioned earlier that there had
12 been some vehicles that were towed. Was that in that
13 300-foot perimeter?

14 A. Yes.

15 Q. Where did those vehicles go?

16 A. We brought them to our remote lot, our
17 regularly operated remote lot on Russell Road.

18 Q. Were the owners of those towed vehicles allowed
19 to retrieve them?

20 A. Yes.

21 Q. I mean between September 11th and September
22 13th.

23 A. Although they were stuck out of town. So once
24 they returned.

25 Q. Oh, Okay.



RECYCLED PAPER MADE FROM 30% POST CONSUMER CONTENT

6



Press Release

[close window](#)

Contact: Chet Lunner
Phone: 202-366-4570

Date Posted: September 12, 2001

Airports to Remain Closed, Mineta Says

Secretary of Transportation Norman Y. Mineta has announced the Federal Aviation Administration will allow a limited reopening of the nation's commercial airspace system in order to allow flights that were diverted yesterday to continue to their original destinations.

The Secretary also announced that the FAA is temporarily extending the ground stop order imposed yesterday while additional security measures are being completed.

"Safety is always of paramount importance, and in these extraordinary times we intend to be vigilant," Mineta said. "We remain committed to resuming commercial flights as soon as possible."

"As the President said last night, these despicable terrorist attacks have shaken the foundation of our greatest buildings, but have not shaken the foundation of this great nation," the Secretary said.

"As America watches the efforts of our heroic emergency responders and rescue personnel, we keep the victims and their families in our prayers," he also said.

Mineta said the FAA would permit flights today only in special limited circumstances. Flights diverted as a result of yesterday's order will be allowed to continue to their original destination under vastly tightened security guidelines. Only passengers on the original flights will be allowed to re-board, and only after airports and airlines have implemented strict screening measures. Airlines will also be allowed to reposition empty aircraft, he said.

Mineta said a variety of stepped-up security measures will be instituted at the airports once they re-open. These measures include:

- A thorough search and security check of all airplanes and airports before passengers are allowed to enter and board aircraft.
- We will discontinue curbside check-in at the airport. We would ask that all passengers go to the ticket counters to check in.
- We will also discontinue off-airport check in. We can no longer allow passengers to check in for their flights at hotels or other venues. Passengers must check in at the airports.
- We must reserve boarding areas for passengers only. Only ticketed passengers will be allowed to proceed past airport screeners to catch their flights.
- Vehicles near airport terminals will be monitored more closely.

"I know all Americans want us to move as quickly and prudently as possible to return our transportation system to normal," Mineta said, "and we will as soon as we can do so safely."

-30-

Questions About This Page



News
U.S. Department of Transportation

Thursday, September 13, 2001
Contact: Chet Lunner
Tel.: 202/366-4570
DOT: 96-01

Statement of U.S. Secretary of Transportation Norman Y. Mineta

Secretary of Transportation Norman Y. Mineta has ordered the national airspace system re-opened to commercial aviation, effective at 11 a.m. Eastern time Thursday.

The Secretary's decision was made after a series of meetings throughout the day and night Wednesday with White House and Cabinet officials, Federal Aviation Administration Administrator Jane Garvey, aviation industry leaders, as well as intelligence and law enforcement representatives.

"The re-opening of our national airspace is good news for travelers, for the airlines and for our economy," Secretary Mineta said. "But I must caution everyone that a system as diverse and complex as ours cannot be brought back up instantly. We will re-open airports and resume flights on a case-by-case basis, only after they implement our more stringent levels of security. This phased approach will assure the highest levels of safety, which remains our primary goal.

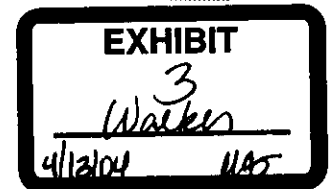
"Anyone planning on flying should check with their airline regarding the level of service and flight schedules, and be sure to allow plenty of time to deal with our new security procedures. There will be some inconveniences, but safety will be the first element of our system to be restored," the Secretary said.

On Wednesday, Secretary Mineta had approved a limited re-opening of the system, allowing aircraft diverted during Tuesday's terrorist attacks to continue to their destinations or be repositioned in anticipation of today's decision.

At the same time, he announced a series of heightened security measures, including a ban on curbside luggage check-in and off-airport passenger check-in. Before being allowed to re-open, airports must clear their terminals of people and conduct thorough searches. Once re-opened, airports will feature an increased presence of law enforcement officers, restricted access beyond the screening area and other restrictions.

###

Briefing Room



FM-C 00214



Las Vegas # McCarran International Airport

NEWS RELEASE

Clark County Department of Aviation - Randall H. Walker, Director

CONTACT: HILARIE GREY

**FOR IMMEDIATE RELEASE
SEPTEMBER 13, 2001**

(702) 261-3094

McCARRAN AIRPORT OPEN; FLIGHTS RESUME ON LIMITED BASIS

Passengers Advised to Call Airline Before Coming to the Airport

- McCarran Airport is currently open, having been certified by the FAA to be in compliance with all current security directives.
- The FAA Air Traffic Control system is now releasing flights on a case-by-case basis. Our local airline operators anticipate that it may take several days to resume full flight schedules.
- We are advising all travelers to continue to contact their airline customer service number for the latest information on specific flights **before coming to the airport**.
- We have the following information to report from some of our local airline offices regarding schedules:

The following airlines have **canceled all scheduled flights for today – Thursday, September 13: Southwest, Continental, American Trans Air**

Southwest is planning to resume service at 9 AM Pacific Time on Friday, September 14. Initial schedules may be limited – Passengers should call the airline for confirmation before coming to the airport.

Continental anticipates operating a limited schedule on Friday, September 14, estimating that about half of its Las Vegas departures will occur. Passengers should call the airline for confirmation before coming to the airport.

America West is currently flying a reduced schedule, and advises passengers to contact their reservation center for information about specific flights.

Alaska Airlines has resumed limited service and would like passengers to know specifically that their **5:30 PM departure to Seattle** will be operating. Call for further details on other flights.

Allegiant Airlines is at this point operating its regular schedule.

(continued)



P.O. Box 11005 # Las Vegas, NV 89111-1005 # 702-261-3094 # Fax 702-261-5645
E-Mail: webmaster2@mccarran.com

*Clark County Department of Aviation
McCarran International Airport – status update
Thursday, September 13, 2001*

Additional information from the FAA:

- General Aviation activity (including flights at Henderson Executive Airport and North Las Vegas Airport) is grounded for today with the exception of some authorized emergency flights.
- Grand Canyon tour flights considered “air taxis” / commercial carriers, and may operate with clearance from the FAA, determined on a case-by-case basis.
- **Once passengers receive confirmation from their airline that their flight is departing, they can anticipate additional security procedures at the airport. They should allow additional time.**
 - **No curb-side or off-airport check in: all passengers checking baggage must proceed to the ticket counter.**
 - **Travelers MUST bring photo identification and any documentation related to their flight – printed ticket, e-ticket receipt, printed itinerary etc. Upon arrival at the airport, passengers should consult the information displays to determine whether they need to proceed to the ticket counter or the security checkpoint.**
 - **Parents of unaccompanied minors, caregivers for disabled passengers and interpreters/guides for tour groups must check in at the ticket counter to receive documented authorization to proceed through the security checkpoint.**
 - **As much as possible, to accommodate security protocols, please limit airport access to actual travelers. Please limit friends & family and greeters.**

11/07/2001 10:59 7029203233

KELLOGG CUTLER LNS

PAGE 01/04

ACCORD®

PROPERTY LOSS NOTICE

DATE (MM/DD/YY)

11/07/2001

PRODUCER PHONE (702) 384-6601
 (A/C, No, Ext):
 FAX (702) 384-4043

MISCELLANEOUS INFO (Site & location code)

DATE OF LOSS AND TIME

09/11/2001

PREVIOUSLY
 REPORTED
 YES X NO

Kellogg-Cutler & Associates
 330 E. Charleston Blvd.
 Las Vegas, NV 89104

POLICY
TYPE

COMPANY AND POLICY NUMBER

EFFECTIVE DATE

EXPIRATION DATE

PROP/
HOME

CO: Factory Mutual Insurance
 POL: UA864

10/01/2000

10/01/2001

FLOOD

POL:

WIND

POL:

CODE: 06916 SUB CODE:
 AGENCY CUSTOMER ID
 00000049

INSURED

NAME AND ADDRESS

Clark County Department of Aviation
 P.O. Box 11005
 Las Vegas, NV 89111-1005

CONTACT

CONTACT INSURED

NAME AND ADDRESS

Lloyd Cutler, 702-384-6601

WHERE TO CONTACT

WHEN TO CONTACT

RESIDENCE PHONE (A/C, No)

BUSINESS PHONE (A/C, No, Ext)

RESIDENCE PHONE (A/C, No)

BUSINESS PHONE (A/C, No, Ext)

LOSS

POLICE OR FIRE DEPT TO WHICH REPORTED

KIND
OF LOSS

FIRE

LIGHTNING

FLOOD

OTHER
(explain)

PROBABLE AMOUNT ENTIRE LOSS

THEFT

HAIL

WIND

DESCRIPTION OF LOSS & DAMAGE (Use reverse side, if necessary)
 Business Interruption loss due to terrorist attack in New York and Washington, DC (see attached).

POLICY INFORMATION

MORTGAGEE

NO MORTGAGEE

HOMEOWNER POLICIES SECTION 1 ONLY (Complete for coverages A, B, C, D & additional coverages. For Homeowners Section II Liability losses, use ACORD 3.)

A. DWELLING

B. OTHER STRUCTURES

C. PERSONAL PROPERTY

D. LOSS OF USE

DEDUCTIBLES

DESCRIBE ADDITIONAL COVERAGES PROVIDED

ON

COVERAGE A. EXCLUDES WIND

SUBJECT TO FORMS (Insert form numbers
 and edition dates, special deductibles)

5. ALLIED LINES & MULTI-PERIL POLICIES (Complete only those items involved in loss)

AM	SUBJECT OF INSURANCE	AMOUNT	% COINS	DEDUCTIBLE	COVERAGE AMOUNT	DESCRIPTION OF PROPERTY INSURED
	BLDG	CNTS				
	BLDG	CNTS				
	BLDG	CNTS				

SUBJECT TO FORMS
 (Insert form numbers
 and edition dates,
 special deductibles)

FLOOD POLICY

BUILDING

DEDUCTIBLE

ZONE

PRE FIRM

DIFF IN EL EV

FORM
TYPE

GENERAL

CONDO

FLOOD POLICY

CONTENTS

DEDUCTIBLE

ZONE

POST FIRM

FORM
TYPE

GENERAL

CONDO

WIND POLICY

BUILDING

DEDUCTIBLE

CONTENTS

ZONE

FORM
TYPE

GENERAL

CONDO

GENERAL

CONDO

REMARKS/OTHER INSURANCE (List companies, policy numbers, coverages & policy amounts)

EXHIBIT

Walker
 4/12/04

CAT # FIG#

ADJUSTER
ASSIGNED

ADJUSTER #

DATE ASSIGNED

REPORTED BY

REPORTED TO

Insured

Agency

SIGNATURE OF PRODUCER OR INSURED

Lloyd W. Cutler

ACORD 1 (12/93)

NOTE: IMPORTANT STATE INFORMATION ON REVERSE SIDE

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FM-C 00484

LAS VEGAS

McCARRAN INTERNATIONAL AIRPORT

Department of Aviation**RANDALL H. WALKER**

DIRECTOR

ROSEMARY A. VASSILIADIS

DEPUTY DIRECTOR

POSTAL BOX 11000

LAS VEGAS, NEVADA 89111-1000

(702) 261-5211

FAX (702) 597-3553

E-MAIL: webmaster2@mccarran.com

November 2, 2001

Lloyd W. Cutler, PCU
Kellogg, Cutler, Yenchek, LaDuke, Holmes
Insurance Services
330 E. Charleston Blvd.
Las Vegas, NV 89104

Dear Lloyd:

As you are aware the Clark County Airport System, including McCarran International Airport, the North Las Vegas Airport and the Henderson Executive Airport, was closed by the Federal Aviation Administration for about two and a half days due to the aviation related terrorist attacks in New York and Washington, DC on September 11, 2001. This event has caused a significant interruption and reduction in the number of passengers and airport revenue generating activities for the foreseeable future.

Please see the attached graph of Total Monthly Passengers by Fiscal Year. The decrease in passengers from September 2000 is 28.3%; however, the decrease from September 2001 projected passengers (2000p) is 31.1%. It is the intention of the Clark County Department of Aviation (CCDOA) to file a loss claim under the Business Interruption clauses of the Factory Mutual (FM) Global Insurance Policy in effect at the time. Currently the extent of loss is not known as airport tenants report activity and revenue up to two months subsequent to their activity; therefore, it may be necessary for the CCDOA to request an extension of time, in addition to the 90 day limit outlined in the policy, in order to accurately calculate the related loss of revenue and additional expense related to this interruption.

Your guidance in filing an accurate and complete claim with FM Global will be sincerely appreciated. Please feel free to call Marc Traasdahl at 261-5113 or Gwyn Taylor at 261-5182 with any questions.

Sincerely,



Randall H. Walker
Director of Aviation

Attachment

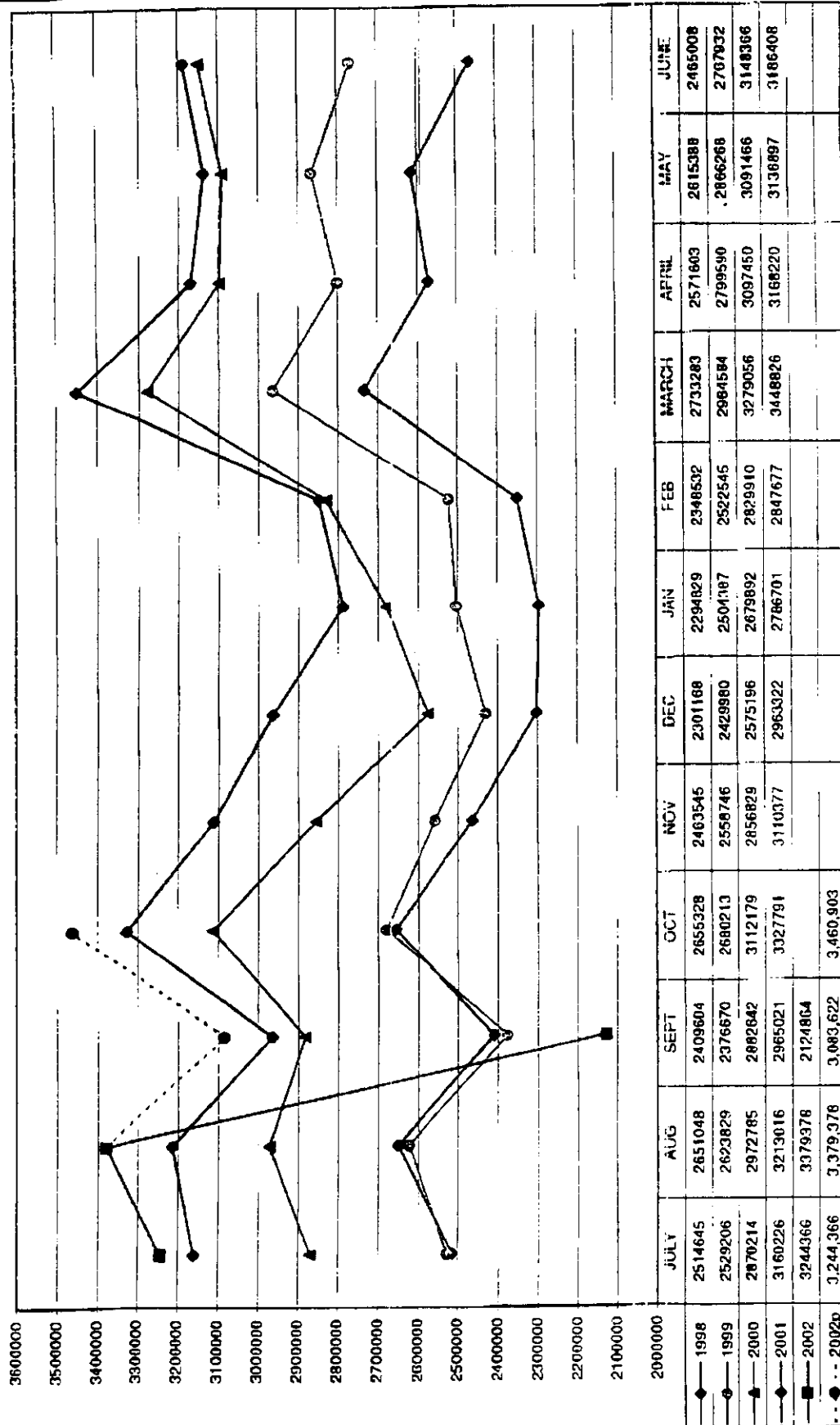
cc: Rosemary Vassiliadis
R. Ross Johnson
Marc Traasdahl
Gwyn Taylor

**Clark County Board of Commissioners**

Dario Herrera, Chairman • Myrna Williams, Vice Chair
Yvonne Atkinson Gates • Erin Kenny • Mary J. Kincaid • Chip Maxfield • Bruce L. Woodbury

FM-C 00485

McCarran Total Monthly Passengers by Fiscal Year



Mo. Decrease - 28.3%, FYTD Decrease - 6.3%

FM-C 00486

11/07/2001 10:59 7029203233

KELLOGG CUTLER INS

PAGE 34164

Lloyd Cutler

To: randyw@mccarran.com
Cc: Gwyn Taylor, Marc Traasdahl; rosemary@mccarran.com; rossj@mccarran.com
Subject: Business Interruption CCDOA 9/11/01

Dear Randy,

I am in receipt of your letter outlining a claim to be presented for the above captioned. We are forwarding the information this day to FM Global in order to initiate the process.

It is my expectation that there is great detail to be involved in gathering all the relevant information for this very comprehensive situation.

Unless I hear otherwise, we are designating Marc Traasdahl and Gwyn Taylor to be the primary contacts for FM Global, as they deem necessary. We are advising FM Global of your request for time needed to get everything in order.

Please understand that it is my intent for all parties, to see this through to a good conclusion on behalf of all concerned, and it is a pleasure to be of service. I will maintain an up to date data base on this claim and remain at your disposal at all times for any need you may have.

Very truly yours,

Lloyd Cutler

COPY

1

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

COUNTY OF CLARK, a political)
subdivision of the State of)
Nevada, on behalf of CLARK)
COUNTY DEPARTMENT OF AVIATION,)

Plaintiff,)

vs.)

NO. CV-S-02-1258-KJD-RJJ

FACTORY MUTUAL INSURANCE)
COMPANY, a Rhode Island)
corporation, and Does 1-10,)

Defendants.)

VIDEOTAPED DEPOSITION OF LLOYD W. CUTLER

Taken on Tuesday, April 13, 2004

2:13 p.m.

At McCarran International Airport
5757 Wayne Newton Boulevard
Las Vegas, Nevada

Reported by: Michelle C. Johnson, CCR 771, RPR-CRR

APPEARANCES:

For the Plaintiff:

STEPHEN V. MASTERSON, Attorney at Law
HOWREY, SIMON, ARNOLD & WHITE LLP
550 South Hope Street, Suite 1100
Los Angeles, California 90071-2627

For the Defendant:

SCOTT G. JOHNSON, Attorney at Law
ROBINS, KAPLAN, MILLER & CIRESI LLP
2800 LaSalle Plaza
800 LaSalle Avenue
Minneapolis, Minnesota 55402-2015

Also Present: Becky Ulrey, Certified Legal Videography

* * * * *

3

I N D E X

WITNESS

PAGE

LLOYD W. CUTLER

EXAMINATION

BY MR. JOHNSON

5

E X H I B I T S

NUMBER

DESCRIPTION

MARKED FOR ID

Cutler

1	4/15/02 LegalTimes article, "Terrorism Insurance"	13
2	3/22/02 letter to Casillas from Johnson, with attachments (FM-C 00145 - 162)	46
3	8/7/02 handwritten document (FM-C 00088)	49

WESTERN REPORTING SERVICES, INC.

Las Vegas, Nevada

(702) 474-6255

1 THE VIDEOGRAPHER: This is the beginning of the
2 deposition of Lloyd Cutler. Today's date is April 13th,
3 2004, and the time on the video monitor is 2:12 p.m.
4 We're at the administration offices at McCarran
5 International Airport in Las Vegas, Nevada.

6 And this case is in the United States District
7 Court, District of Nevada, Case
8 No. CV-S-02-1258-KJD-RJJ, entitled County of Clark, a
9 political subdivision of the State of Nevada, on behalf
10 of Clark County Department of Aviation versus Factory
11 Mutual Insurance Company, et al.

12 My name is Becky Ulrey, a certified legal
13 videographer, and the court reporter is Michelle
14 Johnson, from Western Reporting Services, Incorporated.

15 Will counsel please identify yourselves for
16 voice identification.

17 MR. JOHNSON: Scott Johnson, representing
18 Factory Mutual Insurance Company.

19 MR. MASTERSON: Steve Masterson, from Howrey,
20 Simon, Arnold & White, representing Clark County
21 Department of Aviation.

22 THE VIDEOGRAPHER: The reporter will please
23 administer the oath.

24 LLOYD W. CUTLER,
25 having been first duly sworn, was

1 examined and testified as follows:

2 EXAMINATION

3 BY MR. JOHNSON:

4 Q. Could you please state your full name.

5 A. Lloyd Wendell Cutler.

6 Q. What is your current business address?

7 A. 330 East Charleston, Las Vegas, Nevada, 89104.

8 Q. How long have been at that business address?

9 A. Ten years.

10 Q. Do you have any plans to --

11 A. 11 years.

12 Q. Do you have any plans to move from that
13 address?

14 A. No.

15 Q. Have you had your deposition taken before?

16 A. Never.

17 Q. Let me then give you a few of the ground rules
18 that we'll want you to adhere to during the course of
19 the deposition. I'll be asking you some questions. If
20 at any time one of my questions isn't clear to you,
21 please let me know, and I'll try to rephrase the
22 question for you. All right?

23 A. Yes.

24 Q. And if you don't, I'll have to assume that you
25 understood my question. All right?

1 related losses?

2 A. No.

3 Q. Did you ever hear that the City of Chicago
4 submitted a claim to Factory Mutual for its airport's
5 September 11, 2001 related losses?

6 A. I read about it.

7 Q. Where did you read about it?

8 A. I think in the newspaper. I'm not sure,
9 though. I'm really not sure. It might have been an
10 insurance trade journal. Might have been an aviation
11 trade journal. I read constantly.

12 Q. Do you know what happened in that case?

13 A. I have no idea.

14 Q. You're not aware that the federal District
15 Court in Illinois granted summary judgment in favor of
16 Factory Mutual and against the City of Chicago?

17 A. Not aware of it.

18 Q. If you could, Mr. Cutler, take a look at
19 Exhibit 6, Walker Exhibit 6.

20 MR. MASTERSON: Let me grab that door because I
21 think we're picking up some office sound.

22 THE WITNESS: That looks familiar.

23 BY MR. JOHNSON:

24 Q. Walker Exhibit 6 looks familiar?

25 A. It does.

1 Q. At least the first page you prepared, right?

2 A. I did.

3 Q. And the first page of Exhibit 6 is dated
4 November 7, 2001, right?

5 A. Yes.

6 Q. Why did you wait until November 7, 2001 to
7 notify Factory Mutual?

8 A. I'm not the one that waited. I functioned
9 under direction of the airport in filing the claim.

10 Q. Do you have any understanding of why the Clark
11 County Department of Aviation waited nearly two months
12 after 9/11 to notify Factory Mutual?

13 A. I don't know. I do see under Exhibit 6 that
14 they explain to me in a letter what their -- what their
15 position was. Maybe -- you're calling for speculation.
16 Do I get involved in speculation?

17 Q. No, we don't want you to guess. If you know,
18 please tell us.

19 A. I don't know.

20 Q. Okay.

21 A. I believe that research was provided and the
22 claim was filed in a timely fashion, according to the
23 policy language. It's not like an automobile accident.

24 Q. Going back to the first page of Walker Exhibit
25 6. Under a description of the loss and damage, it says,

COPY

1

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

COUNTY OF CLARK, a political)
subdivision of the State of)
Nevada, on behalf of CLARK)
COUNTY DEPARTMENT OF AVIATION,)

Plaintiff,)

vs.)

NO. CV-S-02-1258-KJD-RJJ

FACTORY MUTUAL INSURANCE)
COMPANY, a Rhode Island)
corporation, and Does 1-10,)

Defendants.)

VIDEOTAPED DEPOSITION OF R. ROSS JOHNSON

Taken on Wednesday, April 14, 2004

2:03 p.m.

At McCarran International Airport
5757 Wayne Newton Boulevard
Las Vegas, Nevada

Reported by: Michelle C. Johnson, CCR 771, RPR-CRR

APPEARANCES:

For the Plaintiff and the Witness:

STEPHEN V. MASTERSON, Attorney at Law
HOWREY, SIMON, ARNOLD & WHITE LLP
550 South Hope Street, Suite 1100
Los Angeles, California 90071-2627

For the Defendant:

SCOTT G. JOHNSON, Attorney at Law
ROBINS, KAPLAN, MILLER & CIRESI LLP
2800 LaSalle Plaza
800 LaSalle Avenue
Minneapolis, Minnesota 55402-2015

Also Present: Becky Ulrey, Certified Legal Videography

* * * * *

I N D E X

WITNESS

PAGE

R. ROSS JOHNSON

EXAMINATION

BY MR. JOHNSON

5

E X H I B I T S

NUMBER DESCRIPTION

MARKED FOR ID

Johnson

1	"Declaration of R. Ross Johnson in Support of Motion for Partial Summary Judgment of Plaintiff County of Clark, a Political Subdivision of the State of Nevada, on Behalf of Clark County Department of Aviation," with attachments	10
2	4/30/02 letter to Casillas from Johnson (FM-C 00108 - 110)	39
3	5/28/02 letter to Johnson from Casillas, with attachment (FM-C 00100 - 103)	40
4	6/19/02 letter to Casillas from Johnson (FM-C 00097 - 099)	42
5	7/11/02 letter to Johnson from Casillas (FM-C 00090 - 093)	43

1 THE VIDEOGRAPHER: Good afternoon. This is the
2 beginning of the deposition of R. Ross Johnson. Today's
3 date is April 14th, 2004. And the time on the video
4 monitor is 2:06 p.m. We are at the administrative
5 offices of McCarran International Airport, in Las Vegas,
6 Nevada.

7 And this case is in the United States District
8 Court, District of Nevada, Case No.
9 CV-S-02-1258-KJD-RJJ, entitled County of Clark, a
10 political subdivision of the State of Nevada, on behalf
11 of Clark County Department of Aviation versus Factory
12 Mutual Insurance Company, et al.

13 My name is Becky Ulrey, from Certified Legal
14 Videography. And the court reporter is Michelle
15 Johnson, from Western Reporting Services, Incorporated.

16 Will counsel please identify yourselves for
17 voice identification.

18 MR. JOHNSON: Scott Johnson, representing
19 Factory Mutual Insurance Company.

20 MR. MASTERSON: Steve Masterson, from Howrey,
21 Simon, Arnold & White, representing Clark County
22 Department of Aviation and Mr. Johnson.

23 THE VIDEOGRAPHER: The court reporter will now
24 administer the oath.

25 * * * * *

1 R. ROSS JOHNSON,
2 having been first duly sworn, was
3 examined and testified as follows:

4 EXAMINATION

5 BY MR. JOHNSON:

6 Q. Could you please state your full name.

7 A. R. Ross Johnson.

8 Q. What is your current address?

9 MR. MASTERSON: Business address.

10 MR. JOHNSON: Business address is fine.

11 THE WITNESS: Corner of Paradise and Twain.
12 3720 Howard Hughes Parkway, Suite 200.

13 BY MR. JOHNSON:

14 Q. In Las Vegas?

15 A. Las Vegas, Nevada.

16 Q. And the ZIP code?

17 A. 89109.

18 Q. Mr. Johnson, have you had your deposition taken
19 before?

20 A. Yes.

21 Q. On how many occasions?

22 A. Probably two.

23 Q. When was the most recent of those?

24 A. Oh, six, seven years ago.

25 Q. You're probably familiar with the process, at

1 Q. Did you prepare this letter?

2 A. I'm not sure what you mean, prepare the letter.

3 Q. Did you write it?

4 A. I did not personally write the letter.

5 Q. Who did?

6 A. This is a letter that was part of the group
7 effort, including some consultants.

8 Q. When you say it was a group effort, who was
9 involved -- who comprised that group?

10 A. Ross Johnson, Marc Traasdahl, and then our
11 consultants.

12 Q. What consultants?

13 A. The letter is copied to Mr. Thomas Mury, of
14 Deloitte & Touche; and a Mr. Lloyd Cutler, of Cutler,
15 Kellogg, Yenchek, LaDuke, Holmes Insurance Services.

16 Q. Can you tell me what portions of Walker Exhibit
17 11 that you actually wrote?

18 A. My name.

19 Q. Was that it?

20 A. Yeah.

21 Q. That's a yes?

22 A. Yes.

23 Q. In the second paragraph of the letter, there's
24 a reference to a number of different provisions in the
25 Factory Mutual policy, right?

1 A. Yes.

2 Q. There's the Protection and Preservation of
3 Property section, right?

4 A. Yes.

5 Q. The Contingent Time Element Extension section,
6 right?

7 A. Yes.

8 Q. And the Ingress/Egress Time Element Extension,
9 right?

10 A. Yes.

11 Q. Were there any other provisions under which
12 Clark County Department of Aviation believed there was
13 coverage?

14 MR. MASTERSON: Objection, calls for
15 speculation.

16 THE WITNESS: I'm not -- I don't know.

17 BY MR. JOHNSON:

18 Q. Are you aware of any others?

19 A. You know, right now, I'm not.

20 Q. Are you familiar with those coverages?

21 A. I was familiar with them at the time.

22 Q. What was the Protection and Preservation of
23 Property section?

24 MR. MASTERSON: Objection, compound, calls for
25 speculation.

Richard J. Pocker
Nevada Bar No. 003568
Dickerson, Dickerson, Consul & Pocker
777 N. Rainbow Blvd., Suite 350
Las Vegas, Nevada 89107
Telephone: (702) 388-8600
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Attorneys for Defendant FACTORY
MUTUAL INSURANCE COMPANY

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

COUNTY OF CLARK, a political
subdivision of the State of Nevada, on
behalf of Clark County Department of
Aviation,

Plaintiff,

vs.

FACTORY MUTUAL INSURANCE
COMPANY, a Rhode Island
Corporation, and DOES 1-10,

Defendant.

Case No: CV-S-02-1258-KJD-RJJ

**[PROPOSED] ORDER ON
FACTORY MUTUAL INSURANCE
COMPANY'S MOTION FOR
SUMMARY JUDGMENT**

Defendant FACTORY MUTUAL INSURANCE COMPANY's Motion for
Summary Judgment came on regularly for hearing before this Court. After
considering the moving and opposition papers, arguments of counsel and all other
matters presented to the Court,

IT IS HEREBY ORDERED THAT FACTORY MUTUAL INSURANCE
COMPANY's Motion for Summary Judgment is GRANTED.

1 THEREFORE, Judgment is entered in favor of FACTORY MUTUAL
2 INSURANCE COMPANY.

3
4 Dated: _____

5 Honorable Kent J. Dawson
6 United States District Judge
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PROOF OF SERVICE

I am employed in the county of Hennepin, state of Minnesota. I am over the age of 18 and not a party to the within action; my business address is 800 LaSalle Avenue, Suite 2800, Minneapolis, Minnesota 55402.

On May 26, 2004 I served the following documents described as: *Defendant Factory Mutual Insurance Company's Notice of Motion and Motion for Summary Judgment; Supporting Memorandum of Points and Authorities; Statement of Uncontroverted Facts in Support of Its Motion for Summary Judgment; Affidavit of Scott G. Johnson and proposed Order*

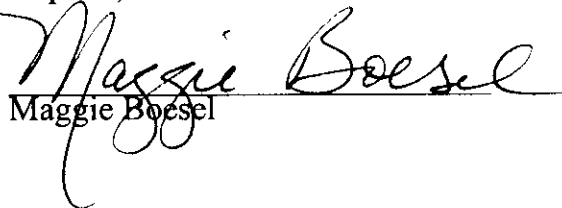
by placing true copies hereof enclosed in a sealed envelope addressed as follows:

Stephen Masterson, Esq.
Howrey, Simon, Arnold & White
550 South Hope Street, Suite 1400
Los Angeles, California 90071-2627

BY MAIL: I caused such envelope to be deposited in the mail at Minneapolis, Minnesota.. This envelope was mailed with postage thereon fully prepaid. I am readily familiar with this firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Minneapolis, Minnesota in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on May 26, 2004 at Minneapolis, Minnesota.


Maggie Boesel